

## UNIFORM CODE OF MILITARY JUSTICE

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Mr. BROOKS, from the Committee on Armed Services, submitted the following

### REPORT

[To accompany H. R. 4080]

The Committee on Armed Services to whom was referred the bill (H. R. 4080) to unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard, and to enact and establish a Uniform Code of Military Justice, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

On page 5, line 18, following "(11)" insert "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law," and substitute a small a for the capital A in "All".

On page 5, line 24, following "(11)" insert "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law," and substitute a small a for the capital A in "All", and after the word "by" insert "or otherwise reserved or acquired for the use of".

On page 6, line 2, substitute a capital T for the small t in "territories".

On page 6, line 18, delete "after apprehension" and on line 19, after "shall" insert "after apprehension".

On page 15, line 15, add "s" to "subdivision".

On page 20, line 24, hyphenate the words "court martial".

On page 25, line 4, insert a comma after "trial counsel".

On page 39, line 16, hyphenate "court martial".

On page 43, line 6, substitute "otherwise" for "other".

On page 54, line 13, substitute "Court of Military Appeals" for "Judicial Council".

On page 55, line 4, after "Senate." insert "Not more than two of the judges of such court shall be appointed from the same political party."

On page 56, line 3, delete "g" from "withing".

On page 57, line 9, after "report" substitute "to" for "the", and in line 12, after "cases", insert "and".

On page 58, line 18, substitute a small "a" in "Article".

On page 58, line 25, substitute a dash for the period.

On page 59, line 12, substitute "Military" for "The".

On page 60, line 11, hyphenate "bad conduct".

On page 69, line 6, substitute "oi" for "at".

On page 77, line 17, after "place", substitute "or" for "of".

On page 79, line 23, delete "pro-".

On page 99, line 5, substitute "dismissal" for "dismissed".

On page 99, line 6, hyphenate "bad conduct".

On page 99, strike the proviso beginning on line 25 and ending on page 100, line 2, and substitute the following new proviso:

*Provided*, That when the Coast Guard is operating as a service in the Treasury Department the provisions of this section shall not be applicable thereto.

The purpose of the proposed legislation is to establish a Uniform Code of Military Justice.

In July of 1948, Secretary of Defense Forrestal appointed a special committee to draft a Uniform Code of Military Justice, uniform in substance and uniform in interpretation and construction, to be equally applicable to all of the armed forces. Prof. Edmund Morgan, Jr., of the Harvard Law School was designated chairman, the remainder of the committee being Assistant Secretary of the Army Gordon Gray, Under Secretary of the Navy John Kenney, and Assistant Secretary of the Air Force Eugene Zukert. Supplementing the efforts of the main committee was a working group of approximately 15 persons, including officer representatives of each of the services and 5 civilian lawyers with service experience, under the chairmanship of Mr. Felix Larkin, assistant general counsel in the Office of the Secretary of Defense.

During the 7-month study which was conducted, the Morgan committee and the working group considered the Revised Articles of War, the Articles for the Government of the Navy, the Federal Code, the penal codes of various States, and voluminous reports on military and naval justice which have been made in recent years by various distinguished persons. The end result of this combined effort was H. R. 2498, a bill to provide a Uniform Code of Military Justice.

The committee conducted hearings 6 days a week for almost 5 weeks, during which time a total of 28 witnesses testified. They included representatives of the four major veterans' organizations, four bar associations, including the American Bar Association, the Reserve Officers' Association, the National Guard Bureau and the National Guard Association, the Under Secretary of the Navy, the Assistant Secretary of the Air Force, and numerous other well-qualified witnesses. Upon the conclusion of all testimony the subcommittee gave detailed consideration to each article and section of this bill. Their deliberations, exclusive of 2 executive sessions, are embodied in a transcript of 1,542 pages. As a result of committee amendments, H. R. 2498 was reintroduced. A clean bill, H. R. 4080, representing the final decisions has been substituted for H. R. 2498.

The proposed code is presented in 14 sections and is further subdivided into 11 parts. Part 1 contains general provisions. Part 2 contains all of the provisions relating to apprehension and restraint. Part 3 pertains to nonjudicial punishment. Part 4 sets forth the jurisdiction of courts martial. Part 5 prescribes the manner of appointment and composition of courts martial. Part 6 prescribes pretrial procedure. Part 7 prescribes trial procedure. Part 8 relates to sentences by courts martial. Part 9 prescribes the provisions for appellate review. Part 10 sets forth and defines the punitive articles. Part 11 contains miscellaneous provisions. Section 1 of the bill contains 140 articles. These articles embrace all of the provisions of the proposed Uniform Code of Military Justice. The 13 remaining sections relate to the subject of military justice but are not germane to a Uniform Code of Military Justice and are, therefore, excluded from section 1 of the bill.

The proposed code is uniformly applicable in all of its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace. It covers both the substantive and the procedural law governing military justice and its administration in all of the armed forces of the United States. If adopted, it will supersede the Articles of War, the Articles for the Government of the Navy, and the Disciplinary Laws of the Coast Guard and will be the sole statutory authority for:

- (1) The infliction of limited disciplinary penalties for minor offenses without judicial action;
- (2) The establishment of pretrial and trial procedure;
- (3) The creation and constitution of three classes of courts martial corresponding to those now in existence;
- (4) The eligibility of members of each of the courts and the qualifications of its officers and counsel;
- (5) The review of findings and sentence and the creation and constitution of the reviewing tribunals; and
- (6) The listing and definition of offenses, redrafted and rephrased in modern legislative language.

The code, while based on the Revised Articles of War and the Articles for the Government of the Navy, is a consolidation and a complete recodification of the present statutes. Under it, personnel of the armed forces, regardless of the Department in which they serve, will be subject to the same law and will be tried in accordance with the same procedures. The provisions of section 1 of the bill will provide, for the first time in the history of this Nation, a single law for the administration of military justice in the armed forces.

Among the provisions designed to secure uniformity are the following:

- (1) The offenses made punishable by the code are identical for all the armed forces;
- (2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces;
- (3) The procedure for general courts martial is identical as to institution of charges, pretrial investigation, action by the convening authority, review by the Board of Review, and review by the Court of Military Appeals in all the armed forces;
- (4) The rules of procedure at the trial including modes of proof are equally applicable to all the armed forces;

(5) The Judge Advocates General of the three Departments are required to make uniform rules of procedure for the Boards of Review in each Department;

(6) The required qualifications for members of the court, law officer, and counsel are identical for all of the armed forces;

(7) The Court of Military Appeals, which finally decides questions of law, is the court of last resort for each of the armed forces and also acts with the Judge Advocates General of the three Departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

Among the provisions designed to insure a fair trial are the following:

*General courts martial*

(1) A pretrial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf.

(2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.

(3) A mandatory provision for a competent, legally trained counsel at the trial for both the prosecution and the defense.

(4) A prohibition against compelling self-incrimination.

(5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.

(6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.

(7) A provision whereby voting on challenges, findings, and sentences is by secret ballot of the members of the court.

(8) A provision requiring the law officer to instruct the court on the record concerning the elements of the offense, presumption of innocence, and the burden of proof.

(9) A provision for an automatic review of the trial record for errors of law and of fact by a board of review with the right of the accused to be represented by legally competent counsel.

(10) A prohibition against receiving pleas of guilty in capital cases.

(11) A provision for the review of the record for errors of law by the Court of Military Appeals. This review is automatic in cases where the sentence is death or involves a general or flag rank officer. A review may be requested by petition on the part of the accused in any sentence involving confinement of 1 year or more.

*Special and summary courts martial*

Under present law and procedure there is great variation in the nomenclature, composition, procedure, and powers of the intermediate military courts. This bill completely eradicates all of those differences and establishes complete uniformity.

The foregoing constitutes a general summary of the provisions of this bill. However, there are a few provisions which gave the committee much concern and to which the witnesses devoted a majority of their testimony, an explanation of those provisions being as follows:

Article 2, subdivision (2), of the bill, as introduced, apparently conferred very wide jurisdiction over Reserve personnel. Technically speaking, Reserve personnel in uniform or even when taking a

correspondence course would have been subject to the jurisdiction of this code. While we do not feel that the armed forces desired such wide latitude, we were unanimous in the decision that the jurisdiction should be limited by statute and not left to regulations. Therefore, we substituted an entirely new subdivision which we feel is entirely proper. You will note that Reserve personnel do not become subject to this code when on inactive duty training unless such training is pursuant to written orders which are voluntarily accepted and which specifically state that the acceptance of such orders will subject that particular Reserve to the provisions of this code.

The original provisions of article 3 (a) provided for a continuing jurisdiction by the military over persons who had returned to an inactive-duty status but had committed an offense against military law while on an active-duty status. The Reserve components voiced strenuous objection to such proposals and it is admitted that those proposals went much further than existing law. As a matter of fact, the military authorities have been most reluctant to prosecute the average offender who succeeds in returning to a civilian status before the discovery of his crime. On the other hand, the military authorities have found themselves confronted with a lack of jurisdiction to try certain aggravated cases of this character. You will recall the Durant jewel case. That case involved the theft of the crown jewels of Hesse. At the time Mrs. Durant, one of the accused, was apprehended, she was in a terminal-leave status. The point was raised by a petition for a writ of habeas corpus that the Army had ceased to have jurisdiction over the accused since her active service was terminated and she was only completing the unexpired portion of her terminal leave. A writ of habeas corpus was granted in district court but ultimately reversed on the theory that the terminal-leave status is a service status and subjects one to the Articles of War. If charges and specifications had not been served on the accused until after the expiration of her terminal leave, neither the military nor our Federal courts would have had any jurisdiction over the case. You will also recall the more recent Hershberg case. Hershberg was a Navy enlisted man who allegedly abused other American military personnel who were under his supervision while they were all prisoners of war of the Japanese. Hershberg's term of enlistment expired and after 1 day he reenlisted. The Navy then attempted to prosecute him for the alleged abuse of American persons. A writ of habeas corpus was granted in that case, not because it would be unconstitutional to provide for a continuing jurisdiction in such cases, but because the present Navy statute confers no such continuing jurisdiction.

We felt that there was a solution to this problem and our proposed solution is offered in article 3 (a) which is a committee amendment to H. R. 2498. It provides for a continuing jurisdiction provided the offense against this code is punishable by confinement of 5 years or more and provided further that the offense is not triable in a State or Federal court of the United States. We feel that this will provide ample protection against any capricious action on the part of military authorities, will limit military jurisdiction to serious offenses that could not otherwise be tried by military or Federal courts and will likewise correct the absurd situation of permitting an honorable discharge to operate as a bar to a prosecution for murder or other serious offenses.

Article 15 replaces the present provisions of the Navy for Navy and Coast Guard mast punishment and the present provisions of the Army and Air Force for disciplinary punishment by commanding officers. We were of the opinion that a 50-percent pay forfeiture for 3 months was an excessive penalty for disciplinary infractions by officers. Therefore, we reduced the maximum forfeiture from 3 months to 1 month. We likewise disagreed with the original provisions of this article which permitted a forfeiture of one-half of an enlisted person's pay for 1 month. Enlisted persons are in a far different pay status than officers, and we do not feel that a pay forfeiture is appropriate as punishment for disciplinary infractions by enlisted persons.

This article also provided for confinement for not to exceed seven consecutive days and confinement on bread and water or diminished rations for a period not to exceed five consecutive days. The Army and the Air Force have never used confinement, with or without bread and water, as a disciplinary punishment. On the contrary, it is a provision of long standing in the Navy and Coast Guard. We are of the opinion that this type of disciplinary punishment should not be used ashore. However, we recognize that disciplinary matters aboard ship present an entirely different problem. Accordingly, we have authorized confinement for 7 days or confinement on bread and water or diminished rations for not to exceed 5 days when imposed upon a person attached to or embarked in a vessel. In view of the fact that Army and Air Force personnel are stationed throughout the world and must necessarily spend a portion of their time aboard ship in reaching or returning from such stations, it is intended that the present provisions for confinement on bread and water shall not be restricted to Navy enlisted personnel but shall be equally applicable to all other enlisted personnel of the armed forces when attached to or embarked in a vessel. As a result of our amendments we have achieved uniformity in the types of disciplinary punishments which may be adjudged.

Article 26 provides the authority for a law officer of a general court-martial. Under existing law the Navy has no law officer. The Army and Air Force do have a law officer for general courts martial who, in addition to ruling upon points of evidence, retires, deliberates, and votes with the court on the findings and sentence. Officers of equal experience on this subject are sharply divided in their opinion as to whether or not the law officer should retire with the court and vote as a member. In view of the fact that the law officer is empowered to make final rulings on all interlocutory questions of law, except on a motion to dismiss and a motion relating to the accused's sanity, and in view of the fact that the law officer will now instruct the court upon the presumption of innocence, burden of proof, and elements of the offense, we feel that he should not retire with the court with the voting privileges of a member of the court. Article 26, in our opinion, contains the appropriate provisions on this matter.

Article 67 contains the most revolutionary changes which have ever been incorporated in our military law. Under existing law all appellate review is conducted solely within the military departments. This has resulted in widespread criticism by the general public, who, with or without cause, look with suspicion upon all things military and particularly on matters involving military justice. Every Member of

Congress, both present and past, is well aware of the validity of this statement. The original bill provided for the establishment of a judicial council to be composed of at least three members. In view of the fact that this is to be a judicial tribunal and to be the court of last resort for court-martial cases, except for the constitutional right of habeas corpus, we concluded that it should be designated by a more appropriate name. We likewise questioned the number of members to be provided. As a consequence we have substituted a new subdivision (a) which establishes the Court of Military Appeals, consisting of three members who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. Such appointees must be members of a State or Federal bar, shall hold office during good behavior and receive the same compensation, allowances, and retirement benefits as judges of the United States courts of appeals. We must frankly admit that it is impossible to ascertain with any degree of accuracy the case load which this tribunal must consider. You will note under subdivision (b) that it shall review the records of (1) cases affecting a general or flag rank or including the death sentence, (2) cases which the Judge Advocate General may forward on his own motion and (3) all cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the court has granted a review. Rather than provide for a greater number of members than three for the Court of Military Appeals, we have concluded that it would be sounder to limit the number to three until such time as the facts may warrant an increase in number. The article as presently written embodies those conclusions.

Perhaps the most troublesome question which we have considered is the question of command control. Under existing law commanding officers refer the charges in general, special, and summary courts martial and convene the courts; they appoint the members of the court, law officer for general courts and counsel for trial; and retain full power to set aside findings of guilty and modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of any sentence imposed. We have preserved these elements of command in this bill. On the other hand, we have included numerous restrictions on command. The bill provides that the convening authority may not refer charges for trial until they are examined for legal sufficiency by the staff judge advocate or legal officer; authorizes the staff judge advocate or legal officer to communicate directly with the Judge Advocate General; requires all counsel at a general court-martial trial to be lawyers or law graduates and, in addition, to be certified as qualified by the Judge Advocate General; provides a law officer who must be a lawyer whose ruling on interlocutory questions of law will be final and binding on the court and who must instruct the court on the presumption of innocence, burden of proof, and the elements of the offense charged; provides that the staff judge advocate of the convening authority must examine the record of trial for sufficiency before the convening authority can act on a finding or sentence; provides legally qualified appellate counsel for an accused before a board of review and the Court of Military Appeals; establishes a civilian court of military appeals, completely removed from all military influence or persuasion; and makes it a

court-martial offense for any person subject to this code to unlawfully influence the action of a court martial.

Able and sincere witnesses urged our committee to remove the authority to convene courts martial from "command" and place that authority in judge advocates or legal officers, or at least in a superior command. We fully agreed that such a provision might be desirable if it were practicable, but we are of the opinion that it is not practicable. We cannot escape the fact that the law which we are now writing will be as applicable and must be as workable in time of war as in time of peace, and, regardless of any desires which may stem from an idealistic conception of justice, we must avoid the enactment of provisions which will unduly restrict those who are responsible for the conduct of our military operations. Our conclusions in this respect are contrary to the recommendations of numerous capable and respected witnesses who testified before our committee, but the responsibility for the choice was a matter which had to be resolved according to the dictates of our own conscience and judgment.

The final point involves the question of whether or not we shall establish separate Judge Advocate Generals Corps for the Navy and the Air Force, as has already been done in the Army, in Public Law 759 of the Eightieth Congress. Practically every witness who testified before our committee, except departmental witnesses, urged that such corps be adopted. Even though there were no provisions on this matter in the bill, our committee gave a great deal of consideration to the proposal. The Navy and the Air Force strenuously opposed the establishment of Judge Advocate Corps in their services. We came to the conclusion that since we now have a Judge Advocate Corps in the Army and since the Court of Military Appeals will have an opportunity to review the comparative results of the Army with its corps as against the Navy and the Air Force without such a corps, that we should permit the services to operate under their present different plans until such time as we may be able to factually determine the best method of operation. In spite of this decision we have reached the conclusion that the Navy and the Air Force are not giving adequate recognition to their law specialists and judge advocate officers, respectively.

It may not be generally known, but there is no requirement under present law that the Judge Advocate General of any of the services be a qualified lawyer. We think that that is a deficiency which should be corrected. In view of these conclusions we have added a new section to the bill which appears as section 13. You will note that it requires that the Judge Advocates General must be members of a Federal or State bar, must be judge advocates or law specialists, and must have at least 8 years accumulative experience in a Judge Advocates Corps, department, or office, the last 3 years of which, prior to appointment, must be consecutive. Now, in order that there may be no misunderstanding by either the Navy or the Air Force, we point out that we are fully aware that the Navy has a number of unrestricted line officers who have law degrees and may qualify as law specialists as well as officers of the line. We do not intend that such officers shall be precluded from becoming Judge Advocates General as a result of this section. We do, however, insist that all Judge Advocates General be legally qualified, with a prescribed amount of experience, and that a substantial portion of that experience be obtained immediately prior

to appointment to the office of the Judge Advocate General. If the Navy or the Air Force have officers who are not law specialists or judge advocates but are otherwise qualified under this section, they are not precluded from designating such officers as judge advocates or law specialists immediately prior to appointment. It is to be hoped, however, that neither the Navy nor the Air Force will continue to relegate their legal personnel to positions of lesser importance and dignity than their counterparts in the line. We think it entirely sound and proper that the Judge Advocates General be chosen from those who have sacrificed the prerogatives of the line officer in order to follow a legal career in the services. We hope to see some revised thinking on this subject and will view future developments with interest.

In addition to the committee amendments to H. R. 2498 which appear as original provisions in H. R. 4080, two substantive amendments to H. R. 4080 which are worthy of comment have been adopted by the committee. The first amendment relates to the selection of judges for the Court of Military Appeals as provided in article 67. The committee is of the opinion that it is desirable to remove every possible criticism from the proposed code and that a limitation on the number of judges who may be appointed from the same political party is not only appropriate but highly desirable. The committee has adopted such an amendment to article 67. The second amendment pertains to article 2, page 5, subdivision 11, beginning on line 18, and subdivision 12, beginning on line 24. You will note that subdivision 11 confers jurisdiction over all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States and certain territories. Subdivision 12 confers jurisdiction over all persons within an area leased by the United States which is under the control of the Secretary of the Department and which is without the United States and certain Territories. It has been discovered that the United States armed forces occupy certain territory in the Philippines, which territory was originally acquired for the use of the United States by virtue of the 1898 Treaty with Spain, which territory continues to be used by our armed forces by virtue of the military base agreement of 1947 between the United States and the Philippines. We find that under the provisions of subdivision 12, we will have no jurisdiction over persons not otherwise subject to this code who enter this property and commit offenses while on the property. It is considered desirable to have such jurisdiction. On the other hand we fully recognize the fact that certain limitations have been placed upon the jurisdiction of the United States by virtue of certain treaties and agreements and that this jurisdiction may be further curtailed by future agreements. Certainly, we do not desire to arouse the suspicion of any foreign governments by the use of any language in this code which would appear to give the armed forces jurisdiction in excess of obligations which we have already or may in the future assume by treaty or agreement. In order that our intent be made perfectly clear, the following amendment was adopted: On page 5, line 18, at the beginning of subdivision (11) insert "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law," and substitute a small a for the capital A in "All".

On page 5, line 24, insert the same amendment as in subdivision (11) and, in addition, on line 24, after "by" insert "or otherwise reserved or acquired for the use of".

The adoption of the proposed amendments in subdivision (11) and (12) will insure that the armed forces will have jurisdiction over both leased areas and areas otherwise reserved or acquired for the use of the United States and it will also insure that such jurisdiction is subject to the limitations imposed in any treaty or agreement to which the United States is or may be a party.

A sectional analysis of the bill is as follows:

## SECTION I

### *Article 1. Definitions*

The definitions in this article pertain only to this code. In the interest of economy of draftsmanship certain words, such as "The Judge Advocate General", have been given special meanings.

For the purpose of this code, the Marine Corps and, when operating as part of the Navy, the Coast Guard are considered part of the naval armed forces. The term "armed force" includes all components.

A provision as to masculine and feminine gender is unnecessary in light of 1 U. S. C., section 1. The contents of this article are derived from article of war 1, Navy Courts and Boards, appendix B-73, and 1 U. S. C., section 1 (1946).

### *Article 2. Persons subject to the code*

Paragraph (1) is an adaptation of AW 2 (a). The term "inductees" has been added to make the paragraph consistent with section 12 of Public Law 759, "the Selective Service Act of 1948", Eightieth Congress, second session (June 24, 1948), which provides:

No person shall be tried by court martial in any case arising under this title unless such person has been actually inducted for training and service prescribed under this title \* \* \*

Paragraph (2) is an adaptation of AW 2 (b). See article 1 for definitions of "cadet" and "midshipman".

Paragraph (3) is adapted from 34 U. S. C., section 855, and, in its present form, represents a committee amendment. It should be noted that before Reserve personnel can be subject to this code they must voluntarily accept written orders for inactive duty training which orders specify that they are subject to the code.

Paragraph (4) retains existing jurisdiction over retired personnel of a Regular component who are entitled to receive pay. It is based on 10 U. S. C., section 1023 and 34 U. S. C., sections 389 and 853d.

Paragraph (5) represents a lessening of jurisdiction over retired personnel of a Reserve component. Under existing law, the Navy retains jurisdiction over retired Reserve personnel since such personnel are on the same retired list as members of a Regular component. The Army has no such jurisdiction since retirement benefits for non-Regular officers are administered by the Veterans' Administration. This paragraph relinquishes jurisdiction over its Reserve personnel except when they are receiving hospitalization from an armed force. This standardizes jurisdiction of the armed forces over Reserve personnel.

Paragraph (6) perpetuates existing law.

Paragraph (7) is a slight modification of AW 2 (e). It follows article 5 (a) of the proposed revision of the Articles for the Government of the Navy by limiting applicability to those persons who are in the custody of the armed forces.

Paragraph (8) is based on 33 U. S. C., section 855 and 42 U. S. C., section 217. It provides jurisdiction over certain groups when such groups are serving with the armed forces.

Paragraph (9) is consistent with articles 45 and 64 of the Geneva Convention on Prisoners of War, 47 Stat. 2046, 2052 (July 27, 1929), in that the prisoners of war are subject to this code and thereby have the same right of appeal as members of the armed forces.

Paragraph (10) is taken from AW 2 (d). The phrase "in the field" has been construed to refer to any place, whether on land or water, apart from permanent cantonments or fortifications, where military operations are being conducted. (See *in re Berue*, 54 F. Supp. 252, 255 (S. D. Ohio 1944).)

Paragraphs (11) and (12) are adapted from 34 U. S. C., section 1201, but are applicable in time of peace as well as war. Paragraph (11) is somewhat broader in scope than AW 2 (d) in that the code is made applicable to persons employed by or accompanying the armed forces as well as those serving with or accompanying the armed forces, and the Territorial limitations during peacetime have been reduced to include Territories where a civil court system is not readily available.

Personnel of the Coast Guard are subject to this code at all times as members of an armed force. Under existing law, Coast Guard personnel, when serving with the Navy, are subject to the Articles for the Government of the Navy. When not serving with the Navy, Coast Guard personnel are subject to the disciplinary code of the Coast Guard for minor offenses and to trial in the Federal courts for more serious offenses. This is not a desirable arrangement. Under this bill, the Coast Guard, when not serving with the Navy, will conduct its own courts martial for all types of offenses in accordance with the provisions of this code. When serving with the Navy, Coast Guard personnel will be tried under the provisions of this code by the Navy.

### *Article 3. Jurisdiction to try certain personnel*

Subdivision (a) represents a committee amendment. Under existing law, the armed forces lose jurisdiction over military personnel who have been lawfully separated from service. This fact has been clearly established in the recent Federal court decision in the Hershberg case. Inasmuch as the Hershberg case involved an offense which was committed beyond the jurisdiction of our State and Federal courts, there is no tribunal which has any jurisdiction over the person or the offense. It is clearly apparent that some persons can escape trial by court martial by the mere lawful termination of service. This is not a desirable situation. On the other hand, it is desirable to place some limitations on continuing jurisdiction over persons who commit offenses while subject to military law and who terminate their military status before apprehension. In the opinion of the committee, the present provisions of this subdivision provide a desirable degree of continuing jurisdiction and at the same time place sufficient limitations on the continuing jurisdiction to prevent capricious actions on the part of military authorities.

Subdivision (b) is the statutory expression of the law as set out in the Manual for Courts Martial, paragraph 10, and Naval Courts and Boards, section 334. It differs from a similar provision in article 5 (a) of the proposed amendments to the Articles for the Government of the Navy in that it provides that a person who obtains a fraudulent dis-

charge is not subject to this code for offenses committed during the period between the date of the fraudulent discharge and subsequent apprehension for trial by military authorities.

Subdivision (c) is prompted by *Ex parte Drainier* (65 F. Supp. 410 (ND Cal. 1946)), which held that a discharge from the naval service barred prosecution of a person for desertion from the Marine Corps prior to his enlistment in the Navy.

*Article 4. Dismissed officer's right to trial by court martial*

This article should be read in conjunction with the provisions being reenacted in section 10 of this bill. The right to trial will apply only in the case of a summary dismissal by order of the President in time of war (sec. 10 of this bill covers the provisions now found in AW 118 and AGN, article 36).

If the President fails to convene a court martial where there has been an application for trial, or if the court martial convened does not adjudge dismissal or death as a sentence, the procedure followed will be the same as that prescribed in article 75 (d), where a previously executed sentence of dismissal is not sustained on a new trial. This changes present statutory provisions. The change is made because of the doubt, expressed by Winthrop and other authorities on military law, as to the constitutionality of the present provision declaring that an order of dismissal, lawfully issued by the President, shall be void under certain circumstances. Under the proposed provision, it will be possible to achieve the same result—that of restoring the officer.

No time limit has been set on when an application for trial must be submitted. The present statutory provision has been construed to require that the application be made within a reasonable time, which will vary according to circumstances. (See Winthrop, *Military Law and Precedents*, 1920 ed., p. 64; *Digest of Opinions*, Judge Advocate General of the Army, 1912-40, sec. 227.)

References: AGN, article 37; R. S., section 1230 (1875), 10 U. S. C., section 573 (1946).

*Article 5. Territorial applicability of the code*

This article reenacts the present Army provision. It is not in conflict with the provisions in article 2(11) and article 2(12) of this code, which make certain persons subject to the code only when they are outside the United States and also outside certain areas. The code is applicable in all places as to other persons subject to it. Previous restrictive provisions on this subject and the Articles for the Government of the Navy have given rise to jurisdictional problems which this language will correct.

*Article 6. Judge advocates and legal officers*

Subdivisions (a) and (b) are derived from AW 47a. There are no similar provisions in present Navy law. Subdivision (a) differs from AW 47a in order to make clear that the Judge Advocate General will not actually issue orders assigning judge advocates or law specialists but that the appropriate personnel divisions of the respective services will issue such orders in accordance with the recommendations of the Judge Advocate General.

The purpose of subdivision (a) is to place judge advocates and law specialists under the control of the Judge Advocate General. Subdivision (b) not only authorizes direct communication within military

justice channels, but also enhances the position of staff judge advocates and law specialists by requiring direct communication between such officers and their commanding officers.

Subdivision (c), which is based on the sixth proviso of AW 11, is designed to secure review by an impartial staff judge advocate or legal officer.

#### *Article 7. Apprehension*

This article should be read in conjunction with articles 8-14, which codify and enact present practice as to apprehension and restraint of persons subject to the code.

Subdivisions (a) and (b) are new and relate in particular to military police. Subdivision (c) is derived from AW 68 and Naval Justice, chapter 6.

#### *Article 8. Apprehension of deserters*

This article, giving the authority to civil officers to apprehend military deserters, is derived from AW 106, 35 Stat. 622 (1909), and 34 U. S. C., section 1011 (1946).

#### *Article 9. Imposition of restraint*

Subdivision (a) clarifies the meaning of certain terms used by the armed forces. In present Army and Air Force practice, "arrest" refers both to apprehension and to a type of restraint. In Navy practice, "close arrest" would fall within the definition of confinement.

Subdivisions (b), (c), and (d) incorporate present Army and Navy practice. (See art. 97 for offense of unlawful detention.)

Subdivision (e) is included to provide for custody of persons apprehended until proper authority is notified.

#### *Article 10. Restraint of persons charged with offenses*

This article is derived from AW 69 and 70, and conforms to present naval practice. It provides the basis and degree for arrest or confinement of persons subject to this code. The provision as to notification of the accused is new.

#### *Article 11. Reports and receiving of prisoners*

This article is derived from AW 71 and 72. (See arts. 95-97 dealing with restraint.)

#### *Article 12. Confinement with enemy prisoners prohibited*

Present AW 16 could be interpreted to prohibit the confinement of members of the armed forces in a brig or building which contains prisoners of war. Such construction would prohibit putting naval personnel in the brig of a ship if the brig contained prisoners from an enemy vessel, even though segregation within the brig were provided. This article is intended to permit confinement within the same confinement facilities, but would require segregation.

#### *Article 13. Punishment prohibited before trial*

This article is derived from AW 16. The reference to article 57 clarifies the relation of this article to the effective date of sentences. AW 16 has been interpreted to prohibit the enforcement of any sentence until after final approval, even though the accused is in confinement after the sentence is adjudged. It is felt that a person who has been sentenced by a court martial and is in confinement which counts

against the sentence should not draw full pay for the period between the date of sentence and the date of final approval.

The provision as to the rigor of restraint is derived from present Army and Navy practice. The article also makes clear that a person being held for trial may be punished for offenses not warranting trial by court martial.

References: AW 16, MCM, paragraph 19, and Naval Justice, page 78.

*Article 14. Delivery of offenders to civil authorities*

Subdivision (a) perpetuates present Navy practice. The present Army practice was adopted at a time when the Army did not have authority to try its personnel for civil offenses in time of peace, so that if a man were not delivered up he would not be tried at all. Since the armed forces now have such authority, the mandatory feature of AW 74 is felt to be unnecessary. Under the Navy practice, which has worked very satisfactorily, the Secretary of the Navy has given broad authority to commanding officers to effect delivery of enlisted personnel to civil authorities without reference to the Navy Department. (See Alnav 145, June 26, 1947.)

Subdivision (b) adopts present Army practice.

Attention is invited to the provisions in appendix C, Naval Courts and Boards, which deal with the procedure for delivering offenders, and related matters. It is contemplated that these matters will be governed by uniform regulations for the armed forces.

*Article 15. Commanding officer's nonjudicial punishment*

This article is a combination and revision of AW 104 and article 14 of the proposed amendments to the Articles for the Government of the Navy. The punishments authorized by these two provisions are combined in subdivision (a), while subdivision (b) empowers the secretary of the department to place limitations on their imposition. As originally drawn, this article would have permitted confinement for not to exceed 7 days or confinement on bread and water or diminished rations for not to exceed five consecutive days as punishment for disciplinary offenses. The committee is of the opinion that neither of these two types of punishment is appropriate disciplinary punishment ashore. On the other hand, it is recognized that the very nature of naval operations at sea may make these two types of punishment desirable. The committee has amended these provisions, (a) (2) (E) and (F), in accordance with this decision.

The bill originally provided for a forfeiture of an officer's pay of not to exceed 50 percent per month for 3 months, (a) (1) (C), and forfeiture of one-half of an enlisted person's pay for not exceeding 1 month. The committee is of the opinion that a 50 percent forfeiture for 3 months is an excessive penalty for disciplinary infractions by officers and has accordingly reduced the period from 3 months to 1 month. The committee is also of the opinion that the forfeiture of pay in any amount is improper and accordingly has stricken (a) (2) (G) from the bill. In view of these amendments, it is not considered likely that the Secretary of a Department will find it necessary to restrict the types of punishment which are authorized under this article.

Subdivision (b) also empowers the Secretary of the Department to permit members of the armed forces to elect trial by court martial in lieu of proceedings under this article. This recognizes a difference in

present practice among the armed forces. The Navy allows no election on the theory that the commanding officer's punishment relates entirely to discipline, not crime; furthermore, in the Navy the officer who has summary court-martial jurisdiction is the same officer who imposes punishment under this article, or his subordinate. Therefore, to grant an option to naval personnel would be meaningless where the commanding officer was also the summary court officer. In the event the commanding officer were not the summary court officer, it would result in granting a subordinate officer the authority to pass judgment upon his superior. This is not a desirable situation and has resulted in the revision of this subdivision which will permit the Secretary of the Navy to handle this situation by appropriate regulations. In the Army, on the other hand, a company commander with power under this article will not usually have summary court-martial jurisdiction. Almost without exception a summary court officer in the Army or Air Force will be superior in rank to the officer who adjudges disciplinary punishment.

Subdivision (c) permits the Secretary of a Department to authorize officers in charge to impose certain punishments under this article. The status and authority of officers in charge differs according to the command of which they are in charge, and likewise differs between the Navy and the Coast Guard. An "officer in charge" in the Navy is always a commissioned officer, usually in command of a small, isolated detachment. An "officer in charge" in the Coast Guard is construed to include noncommissioned officers as well as commissioned officers. The committee is fully cognizant of this difference, and it is intended that the Coast Guard shall have full authority to extend limited disciplinary authority under this article to noncommissioned officer under appropriate circumstances.

Subdivision (d) incorporates and strengthens the provision of AW 104 as to appeal and review. It is to be noted that any person punished under authority of this article may appeal to the next superior authority. This includes persons of all of the services. Appeals are to be promptly forwarded and decided. In addition, reviewing authorities are permitted not only to remit the unexecuted portion of the punishment, but also to restore all rights adversely affected by the punishment previously executed. This subdivision is new to the Navy and the Coast Guard.

Subdivision (e) is derived from AW 104. Under present Navy practice, punishment by a commanding officer is never a bar to trial by court martial, although evidence of such punishment may be introduced in mitigation of a court-martial sentence which stems from the same offense.

#### *Article 16. Courts martial classified*

Under present law, there are three types of courts martial in each, Army, Navy, and Air Force. In the Army and Air Force, they are designated as summary courts martial, special courts martial, and general courts martial. In the Navy, they are designated as deck courts, summary courts martial, and general courts martial. While the general courts martial in each of the services have equivalent authority, the Navy summary court has considerably less jurisdiction than an Army special court, and the same is true of the Navy deck court as contrasted to the Army summary court. This article con-

solidates provisions as to types of courts martial and number of members. Army and Air Force terminology has been adopted and designated the three types of courts. The maximum limits of the number of members is believed unnecessary. The law officer of a general court martial replaces the law member under the present Articles of War. The law officer is specified in paragraph (1) to show that he is not a member.

*Article 17. Jurisdiction of courts martial in general*

Subdivision (a) authorizes reciprocal jurisdiction among the armed forces, but makes the exercise of such jurisdiction by any force subject to regulations prescribed by the President. Such regulations will enumerate those situations in which one armed force may try personnel of another armed force. This method of providing for the exercise of reciprocal jurisdiction permits flexibility, in that new situations for which the exercise of such jurisdiction may be desirable, can be provided for as they arise.

The provision in subdivision (b) is particularly applicable to cases where reciprocal jurisdiction has been exercised and is therefore placed in this article. The same practice will be followed in all court-martial cases, however. The disposition of records under article 65 is controlled by this subdivision.

*Article 18. Jurisdiction of general courts martial.*

This article is derived from AW 12. The punishments which may be adjudged are changed from those "authorized by law or the customs of the service" to those "not forbidden by this code" because the law and customs of each of the services differ. Cruel and unusual punishments are forbidden in the code; other punishments which may be adjudged will be made uniform by the regulations prescribed by the President under article 56.

It will be noted in the punitive articles, articles 77-134, that the death penalty can be adjudged only when specifically authorized for the violation of a specific punitive article.

*Article 19. Jurisdiction of special courts martial*

This article is derived from AW 13. Special courts martial are given the authority to try capital cases under such regulations as the President may prescribe instead of when the officer with general court-martial jurisdiction over the case authorizes. The Navy proposes this procedure so that prior blanket authority may be obtained for capital offenses to be tried by special courts aboard ship where circumstances make it desirable, since it is not practicable to refer such a case to the officer with general court-martial jurisdiction. Death is added to the list of punishments which a special court martial may not adjudge, to cover the cases which a special court tries which would otherwise be capital cases. Other restrictions on punishment are adopted from AW 13. It is intended that special courts martial shall not have jurisdiction to try offenses for which a mandatory punishment has been prescribed by this code.

The provision in AW 13 that a bad-conduct discharge adjudged by a special court martial is subject to approval by an officer with general court martial jurisdiction has been deleted from this article. The review of special courts-martial records and the execution of sentences are covered in articles 65, 66, and 71 of this code.

References: AW 13 and proposed AGN, articles 17 and 20.

*Article 20. Jurisdiction of summary courts martial*

The right to refuse trial by summary court martial is made absolute, except for the case where a person has been permitted to refuse punishment under article 15.

References: AW 14 and proposed AGN, articles 15 and 16.

*Article 21. Jurisdiction of courts martial not exclusive*

This article preserves existing Army and Air Force law which gives concurrent jurisdiction to military tribunals other than courts martial. The language of AW 15 has been preserved because it has been construed by the Supreme Court (*Ex Parte Quirin*, 317 U. S. 1 (1942)).

References: AW 15; proposed AGN, article 5 (f).

*Article 22. Who may convene general courts martial*

This article is derived from AW 8. Provisions for Navy, Air Force, and Coast Guard convening authorities are added. Paragraphs (6) and (7) permit the President and the Secretaries of the Army, Navy, Air Force, and Treasury (for the Coast Guard when not serving with the Navy) to empower other commanding officers to convene general courts martial. See article 1 for definition of "Department."

Subdivision (b) is derived from AW 8. The word "accuser" is used in place of "accuser or prosecutor," and "accuser" is defined in article 1 in order to clarify its meaning.

References: AW 8; AGN, article 38.

*Article 23. Who may convene special courts martial*

This article is derived from AW 9. Provisions for all the armed forces have been added. An "officer in charge" is an officer of the naval service or Coast Guard who is not known by the title of "commanding officer" but exercises similar authority. Subdivision (b) conforms to article 22.

References: AW 9; AGN, article 26.

*Article 24. Who may convene summary courts martial*

This article is derived from AW 10. Provisions for all the armed forces have been added. It is felt appropriate that all persons empowered to convene superior courts martial should also have power to convene inferior courts martial.

References: AW 10; AGN, article 64; proposed AGN, article 15.

*Article 25. Who may serve on courts martial*

Subdivisions (a), (b), and (c) make officers, warrant officers, and enlisted persons competent to sit as members of courts martial of any armed force, without regard to whether they are members of the same armed force as the convening authority, or of the same armed force as the accused. Placing no limitation on competency in this respect will give the convening authority a maximum number of persons to draw on for membership of a court martial in a situation where he is in command of several small units of different armed forces, or will permit the appointment to a court of persons belonging to the same armed force as the accused in a case in which reciprocal jurisdiction is being exercised. In such cases it is contemplated that the President's regulations on reciprocal jurisdiction will specify what percentage of members will be from the same armed force as

the accused. (See art. 17.) As a practical matter, the appointment of mixed courts will not be a common practice.

Subdivision (c) limits the competency of enlisted persons to cases where they are not members of the same unit as the accused. By section 212 of Public Law 759, Eightieth Congress, Congress similarly limited competency to enlisted persons not assigned to the same company or corresponding military unit. A corresponding military unit aboard a ship, which, though it may in some cases be a larger group than the Army company, is the same kind of integrated body, living and working in close association.

The last sentence of the first paragraph of subdivision (c) was added to make it possible to proceed with the trial where competent enlisted persons cannot be obtained. This is to avoid long delay in the administration of justice and the expensive process, which might otherwise be necessary, of transporting enlisted persons great distances to serve as court members. Such delays and expenses would arise in connection with offenses committed on ships at sea or in isolated units ashore, such as remote weather stations. The language of the subdivision makes it clear that mere inconvenience is no ground for proceeding with the trial without enlisted persons on the court, and the requirement of a detailed written statement including the reasons for such failure insures that the purpose of the subdivision will not be arbitrarily defeated.

References: AW 4, 16; AGN, article 39; proposed AGN, article 24 (a).

*Article 26. Law officer of a general court martial*

This article is derived from AW 8 with modifications. The law officer is required to be a member of the bar whether or not he is a judge advocate or law specialist. The change in the position of the law officer is reflected in subdivision (b) which requires the accused and counsel to be present when the law officer consults with the court, other than on the form of the findings, and states that the law officer shall not be a voting member of the court. (See art. 51 as to rulings and duties of the law officer, and art. 39 as to when the law officer must be present.)

References: AW 8; proposed AGN, article 24 (b)

*Article 27. Appointment of trial counsel and defense counsel*

Subdivision (a) of this article incorporates the opening clause and the fourth and fifth provisos of AW 11. The trial judge advocate is renamed the trial counsel, and the right of the accused to have a person requested by him act as defense counsel is subject to the availability of that person. (See art. 38.)

Paragraph (1) of subdivision (b) incorporates the first proviso of AW 11, but the requirement that counsel be qualified as set forth therein is no longer subject to the exception allowed where such qualified persons are not available. Paragraph (2) of this subdivision, the requirement that counsel be certified by the Judge Advocate General, is drawn from article 24 (b) of the proposed AGN.

Subdivision (c) is based on the second proviso of AW 11. It is made applicable only to special courts martial, since the qualification requirements of subdivision (b) with respect to counsel for general courts martial are not subject to exception.

References: AW 11; proposed AGN, articles 18 (b), 24 (b).

*Article 28. Appointment of reporters and interpreters*

This article is derived from AW 115. The power to appoint reporters and interpreters, however, has been shifted from the president of the court to the convening authority since the latter will have control of the available personnel.

References: AW 115; Naval Courts and Boards, section 361.

*Article 29. Absent and additional members*

This article is based on proposed AGN, article 27, and limits the reasons for excusing members of general and special courts martial.

Subdivisions (b) and (c) specify the procedure for replacing absent members of general and special courts martial. Where a complete transcript of the testimony is kept, only the record need be read to the new members. However, in special court-martial cases where a complete record may not be kept, only such previous evidence as is stipulated by the parties may be deemed to have been introduced.

New members are subject to challenge for cause, and if the parties have not previously exercised their right for peremptory challenges, they may exercise such right against new members.

*Article 30. Charges and specifications*

Subdivision (a) is derived from AW 46a and is new for the Navy. The initial procedure in the Navy is now conducted on the basis of a complaint upon which formal charges and specifications are subsequently based. Subdivision (b) requires disposition of the charges as soon as possible and provides for the notification of the accused. Article 98 makes it an offense to unnecessarily delay the disposition of a case.

This article should be read in conjunction with articles 31-35 which deal with procedures before trial.

References: AW 46a; AGN, article 43.

*Article 31. Compulsory self-incrimination prohibited*

Subdivision (a) extends the privilege against self-incrimination to all persons under all circumstances. Under present Army and Navy provisions only persons who are witnesses are specifically granted the privilege. Subdivision (b) broadens the comparable provision in AW 24 to protect not only persons who are accused of an offense but also those who are suspected of one. Subdivision (c) is similar to AW 24 in that the privilege against self-degradation is granted to witnesses before a military tribunal and persons who make depositions for use before a military tribunal. It is made clear that this privilege cannot be invoked where the evidence is material to the issue—where it might be crucial in the determination of the guilt or innocence of an accused. Subdivision (d) makes statements or evidence obtained in violation of the first three subdivisions inadmissible only against the person from whom they were obtained. This conforms with the theory that the privilege against self-incrimination and self-degradation is a personal one.

The intentional violation of any of the provisions of this article constitutes an offense punishable under article 98.

It is unnecessary to provide in this article that the failure of an accused to testify does not create a presumption against him. (See title 18, U. S. C., sec. 3481.)

References: AW 24; AGN, article 42 (c).

*Article 32. Investigation*

This article is derived from AW 46b and is new to the Navy. Subdivision (c) is added to provide for a case where a court of inquiry or other investigation has been held wherein the accused was afforded the rights required by subdivision (b).

Subdivision (d) is added to prevent this article from being construed as jurisdictional in a habeas corpus proceeding. Failure to conduct the investigation required by this article may be grounds for reversal by a reviewing authority under this code. It is the intention of the committee that pretrial investigations be mandatory on military authorities who have the obligation to hold them, but that a failure to conduct such an investigation or less than full compliance, which does not materially prejudice the substantial rights of an accused, shall not constitute jurisdictional error. To hold otherwise would subject all cases involving a plea of guilty to reversal on jurisdictional error for failure to conduct a pretrial investigation. Certainly the committee does not intend to endorse any provisions which will bring added delays and unnecessary technicalities into the system of military justice. On the other hand, it should be noted that an officer who has the responsibility to order a pretrial investigation who intentionally fails to have such an investigation conducted, and such failure substantially prejudices the rights of an accused, would be guilty of an offense under article 98 of this code.

*Article 33. Forwarding of charges*

This article is derived from AW 46c and is intended to insure an expeditious processing of charges and specifications in general court-martial trials.

*Article 34. Advice of staff judge advocate and reference for trial.*

This article is derived from AW 47b. Subdivision (b) makes clear that in addition to formal corrections, changes in the charges may be made in order to make them conform to the evidence brought out in the investigation without requiring that new charges be drawn and sworn to. The MCM provides that if an essentially different offense is charged as a result of the investigation, the convening authority should direct a new investigation to allow the accused to exercise his privileges with respect to new or different matter alleged.

References: AW 47b; MCM, paragraph 34 (d).

*Article 35. Service of charges*

This article provides for the serving of charges upon the accused. It also provides that, in time of peace, no person shall be brought to trial before a general court martial, against his objection, before 5 days after the service of charges upon him, or before 3 days after service of charges upon him in a special court-martial case.

References: AW 46 (c); AGN, article 43; proposed AGN, article 37.

*Article 36. President may prescribe rules*

This article is derived from AW 38. Proposed AGN, article 48 is similar except that the Secretary of the Navy would be authorized to prescribe rules instead of the President. This article standardizes this authority in the President. The committee has amended the article to provide that all rules and regulations prescribed by the President shall be uniform insofar as practical.

References: AW 38; AGN, articles 34, 64 (e); proposed AGN, article 48.

*Article 37. Unlawfully influencing action of court*

This article incorporates the provisions of AW 88. In addition it prohibits the convening authority from influencing the law officer or counsel. This is similar to the proposed AGN except that the Secretary of the Navy would control such coercion by regulation.

This article is not intended to preclude a reviewing authority from making fair comment on errors of the court in an opinion which is made in the course of review, or from returning a record for revision of errors, or from taking appropriate action when a member of a court has so misbehaved as to abandon his judicial responsibilities or duties.

Article 98 of this code would make violations of this article an offense.

References: AW 88; proposed AGN, articles 9 (45), 39 (j).

*Article 38. Duties of trial counsel and defense counsel.*

Subdivisions (a) and (b) are derived from AW 17 and AW 11.

Subdivision (c): A similar provision appearing in the proposed AGN, article 78, made it mandatory for defense counsel either to submit a brief of such matters as he felt should be considered on review or a statement setting forth his reasons for not so doing. This provision was not adopted because it was felt that if the latter alternative were chosen it might actually prejudice the accused on review. The permissive provision is inserted in the code to encourage defense counsel to submit briefs in appropriate cases.

Subdivisions (d) and (e) are derived from AW 116. Stricter requirements governing the circumstances under which assistant counsel may act independently of the trial counsel or defense counsel are imposed in order to maintain the quality of counsel and to protect the accused.

References: AW 11, 17, 116; proposed AGN, articles 18 (b), 18 (c), 24 (b), 38.

*Article 39. Sessions*

This article expands the provisions of AW 30 to require the presence of all parties and the law officer except when the members of the court retire to vote or deliberate, or when the law officer is to record the findings. In the latter case, the reporter is to accompany the law officer and a verbatim transcript of the proceedings is to be kept. The article also prohibits the court from consulting with either the trial counsel, counsel for the accused, or the law officer in the absence of the others. The requirement of AW 8 that no evidence be received in the absence of the law officer is extended in that the law officer must be present at all times except when the members are to vote or deliberate. The law officer is not a "member" of the court and is not to be present during deliberations or voting. (See art. 26.)

References: AW 8, 30; NC and B, sections 373, 402.

*Article 40. Continuances*

This article follows the present Army and Navy provisions relative to the granting of continuances for reasonable cause in court-martial cases.

References: AW 20; proposed AGN, article 37.

*Article 41. Challenges*

Subdivision (a) provides for challenges for cause of members of a general or special court martial and the law officer of a general court martial.

Subdivision (b) authorizes one peremptory challenge by the trial counsel and one peremptory challenge for each accused. Under existing law, the Navy permits no peremptory challenges and the Army permits only one peremptory challenge for each side, regardless of the number of codefendants.

References: AW 18; proposed AGN, articles 19, 24 (b), and 25.

*Article 42. Oaths*

This article requires that officials and clerical assistants of general and special courts martial be sworn. The oaths are not specified in the code as it is felt that the language of the oaths is suitable matter for regulations.

The article does not require the court to be resworn in every case. The language would allow a court to be sworn once a day where there is to be more than one trial, if the accused in each trial is present at the time that the court is initially sworn.

References: AW 19; AGN articles 28, 40, 41; proposed AGN, articles 19, 25.

*Article 43. Statute of limitations*

Generally speaking, this article provides a statute of limitations of 3 years (b) in the more serious offenses, and a statute of limitations of 2 years in less serious offenses, no statute of limitations for the offense of desertion or absence without leave in time of war, aiding the enemy, mutiny, or murder, and prescribes the conditions under which the statute of limitations will not run.

Subdivision (a): Adopted from AW 39 and proposed AGN, article 5 (b). "Aiding the enemy" is added to the list of offenses which may be tried and punished at any time.

Subdivision (b): Adopted from AW 39. The time when the period of limitation will stop running is changed from the time of arraignment to the time sworn charges and specifications are received by an officer exercising summary court-martial jurisdiction over the command. This provision is considered preferable to the more indefinite provision in AW 39 that the statute is tolled when "by reason of some manifest impediment the accused shall not have been amenable to military justice."

Subdivision (c): This covers all other offenses. The period of limitation is made applicable to trials by court martial and to punishment by a commanding officer.

Subdivision (d): The language used in the second proviso of AW 39 is changed because of its indefiniteness. The clauses "in the custody of civil authorities" and "in the hands of the enemy" are adopted from Navy proposals.

Subdivision (e): Adopted from AW 39.

Subdivision (f): Incorporates the provision in title 18, U. S. C., section 3287, which otherwise might not be applicable to court-martial cases.

References: AW 39; proposed AGN, article 5 (b); title 18, U. S. C., section 3287 (1948), (wartime suspension of limitations).

*Article 44. Former jeopardy*

Under current procedure in military law, jeopardy does not attach to an accused in the same manner as to an accused in civil courts. The question is whether the constitutional provision of jeopardy follows a person who enters military service. While arguments have been offered on both sides of the question, it remains a fact that persons entering the military service must of necessity forfeit certain constitutional protections. Restriction upon the right of free speech must be imposed in order to preserve any semblance of order and discipline. It is recognized that the constitutional provision of a trial by jury is not present in the military. It must be kept in mind that review of courts-martial cases in the military system and in this code by the convening authority in the first instance, and by the board of review in most cases, is mandatory and automatic. In civil courts this is not true. If a person is convicted in civil courts and there is a verdict against him, the appellate tribunal can consider the case and set aside the verdict of guilty and order a new trial, but they do so upon waiver by the defendant in the form of his petition for review and his request for reversal.

Since most military cases are automatically reviewed, the convening authority or the board of review may determine for one reason or another that the verdict of guilty is not sustainable. They may change that verdict, make it a nullity by setting it aside or remanding the case for rehearing, or, in some instances, providing for a new trial. If jeopardy attached at the beginning of the case and a subsequent finding of guilty was set aside for any reason, a rehearing could not be conducted without the consent of the accused because jeopardy would probably have attached. To change the military concept of jeopardy would necessitate a major change in the automatic appellate system that is provided in the military, which automatic system can only work in the interest of the accused.

This article is derived from the first paragraph of AW 40.

References: AW 40; NC and B, section 408.

*Article 45. Pleas of the accused*

Subdivision (a): Drawn from present Army and Navy provisions, except for the provision for entering the plea of not guilty in the record, which is new. The question whether the plea of not guilty should be entered, in the situations covered in this subdivision, will be treated as an interlocutory question, according to the procedure prescribed in article 51 of this code.

It is not intended that a plea of not guilty to the offense charges, but guilty to a lesser included offense, will be an irregular pleading within the meaning of this article.

Subdivision (b) is new but enunciates a rule now followed by the Army, and, as to certain capital offenses, by the Navy.

The provisions of this article will be supplemented by regulations issued by the President. It is contemplated that the recommendations of the Keefe Board as to the procedure to be followed by a court martial when a plea of guilty is entered will be adopted. The proposed procedure is as follows (see Keefe report, p. 142):

(1) In general and special court-martial cases, the plea should be received only after the accused has had an opportunity to consult

with counsel appointed for or selected by him. If the accused has refused counsel, the plea should not be received.

(2) In every case the meaning and effect of a plea of guilty should be explained to the accused (by the law officer of a general court martial; by the president of a special court martial; by the summary court), such explanation to include the following:

(a) That the plea admits the offense as charged (or in a lesser degree, if so pleaded) and makes conviction mandatory.

(b) The sentence which may be imposed.

(c) That unless the accused admits doing the acts charged, a plea of guilty will not be accepted.

(3) The question whether the plea will be received will be treated as an interlocutory question.

(4) The explanation made and the accused's reply thereto should be set forth in the record of trial exactly as given.

It is also contemplated that the regulations will provide that the law officer or the court shall explain the meaning of any special defenses or objections which may appear to be available to the accused, in any case in which he is not represented by counsel, and shall advise him of his right to make them, both as to the offense charged and lesser included offenses, before pleading to the general issue.

The provisions contained in chapter XIII of the Manual for Courts Martial, United States Army, 1949, dealing with the procedure for raising special defenses and objections by motion, were considered by the ad hoc committee in connection with this article and approved as a sound basis for similar provisions to appear in the new regulations. The ad hoc committee also considered, and approved, the provisions in the 1949 Manual for Courts Martial requiring that if it appears from the charges that the statute of limitations has run against an offense, or in the case of a continuing offense, a part of an offense charged, the court will bring the matter to the attention of the accused and advise him of his right to assert the statute. If the accused pleads guilty to a lesser included offense against which the statute of limitations has apparently run, the court will advise the accused of his right to interpose the statute in bar of trial and punishment as to that offense. Similarly, at the time the court is making its findings, if by exceptions and substitutions the accused is found guilty of a lesser included offense, to which he has not entered any plea, the court will advise him in open court of his right to avail himself of the statute in bar of punishment.

References: AW 21; NC and B, sections 413, 416, 417.

*Article 46. Opportunity to obtain witnesses and other evidence*

This article provides equal opportunity to the prosecution and defense to obtain witnesses and other evidence. It is based on AW 22 and proposed AGN, article 35.

It is considered appropriate to leave the mechanical details as to the issuance of process to regulation.

References: AW 22; AGN, article 42 (b); proposed AGN, article 35.

*Article 47. Refusal to appear or testify*

This article provides the authority and the penalty for the violation of such authority to compel persons, not subject to this code, to testify in court-martial cases when duly subpoenaed.

Violation of this article is punishable in a United States district court or in a court of original criminal jurisdiction in any of the Territorial possessions of the United States.

This article is derived from AW 23. Proposed AGN, article 35 (c) is similar. The proviso in AW 23 making certain offenses in title 18, U. S. C., applicable to proceedings before courts martial is omitted, since the language of title 18 includes the important offenses against military justice, such as perjury and bribery of judicial officers. (See title 18, U. S. C., secs. 206, 210, 1621, 1622 (1948).)

References: AW 23; AGN, article 42 (c); proposed AGN, article 35 (b).

#### *Article 48. Contempts*

This article gives courts-martial and other military tribunals authority to summarily punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Maximum punishment is confinement for 30 days or a fine of \$100, or both. It is felt essential to the proper functioning of a court that such court have direct control over the conduct of persons appearing before it.

References: AW 32; AGN, article 42 (a); proposed AGN, article 35.

#### *Article 49. Depositions*

This article provides the authority for the taking and use of depositions in court-martial trials. It should be noted that a deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the convening authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court martial (f).

Subdivision (a) is derived from the third proviso of AW 25. The first sentence is new in that it permits any party to take a deposition after charges are signed unless an officer with authority to convene a court martial for the trial of such charges forbids it for good cause. When such an authority is to designate officers to take depositions, he should consult the accused prior to designating an officer to represent the accused, or if the accused has counsel representing him in other pretrial matters, such counsel should be designated to represent the accused if available.

Subdivision (b) conforms to present practice in all services.

Subdivision (c) is derived from AW 26 and conforms to present Navy practice.

Subdivision (d) is derived from AW 25 and proposed AGN, article 26. The admissibility of a deposition is made dependent upon the need for its use at the time of trial. The same rules of evidence apply to testimony in depositions as apply to oral testimony.

Subdivisions (e) and (f) are derived from AW 25. The proposed AGN does not contain similar provisions.

References: AW 25, 26; proposed AGN, article 36.

#### *Article 50. Admissibility of records of courts of inquiry*

This article specifies the conditions under which the records of a court of inquiry may be used in a subsequent court-martial case.

This article is derived from AW 27 and is similar to present Navy practice. As to parties before courts of inquiry, see article 135 (c).

The effect of the use of the words "not capital and not extending to the dismissal of an officer" is that if the prosecution uses the record of a court of inquiry to prove part of the allegations in one specification, neither death nor dismissal may be adjudged as a result of a conviction under that specification. The introduction of the record of a court of inquiry by the defense shall not affect the punishment which may be adjudged.

References: AW 27; AGN, article 60; proposed AGN, article 44.

*Article 51. Voting and rulings*

This article prescribes the manner in which members of the court martial shall vote. It also provides the authority for the law officer of a general court and the president of a special court to make final rulings upon all interlocutory questions, other than challenge and other than a motion for a finding of not guilty, or the question of accused's sanity.

Subdivision (c) prescribes that the law officer of a general court martial and the president of a special court martial shall instruct the court as to the elements of the offense and charge the court on presumption of innocence, reasonable doubt as to guilt, reasonable doubt as to degree of guilt and burden of proof.

This article is derived from AW 31. The provision of AW 31 allowing the law officer to consult with the court before making a ruling is deleted. In subdivision (c) the law officer and the president of a special court martial are required to instruct the court as to the elements of the offense in addition to those matters specified in AW 31.

The proposed AGN does not require a secret written ballot, but does require the law officer to instruct the court as to the elements of the offense.

References: AW 31; proposed AGN, article 24.

*Article 52. Number of votes required*

This article is derived from AW 43. Proposed AGN, article 28, would require only a majority vote to convict of any offense, but is the same as AW 43 as to the number of votes required for sentences.

Paragraph (3) of subdivision (b) clarifies AW 43 as to the number of votes required for a sentence which does not extend to death or imprisonment in excess of 10 years.

Subdivision (c) clarifies the method for determination of issues to be decided by a majority vote when the vote is tied. It is felt that a tie vote on a challenge should disqualify the person challenged regardless of whether the challenge is by the prosecution or by the defense. It is also felt that a motion for a finding of not guilty and the question of the accused's sanity should not be decided by a tie vote as these are considered again in the vote on the findings. All other tie votes are determined in favor of the accused.

References: AW 43; AGN, article 50; proposed AGN, article 28.

*Article 53. Court to announce action*

This article is derived from proposed AGN, article 28, and requires the trial counsel, the accused, and the defense counsel to be informed of the findings and sentence as soon as the sentence is determined. The findings may be announced as soon as they are determined if it is believed appropriate to do so. AW 29 requires an acquittal to be

announced, but leaves the announcement of the sentence and findings of guilty to the discretion of the court. It is felt appropriate, however, that the accused and his counsel be informed as to the outcome of the trial as soon as the results are determined.

References: AW 29; proposed AGN, article 28.

*Article 54. Record of trial*

Subdivision (a) contains provisions similar to those of proposed AGN, article 29, but differs from AW 33 in that the law officer and the president authenticate the record of a general court martial. AW 33 requires the trial counsel and the president to authenticate the record. It is intended that records of general courts martial shall contain a verbatim transcript of the proceedings.

Subdivision (b) is derived from AW 34. This article is subject to the provision of article 19 which requires a complete record to be kept in cases where a bad-conduct discharge is adjudged.

Subdivision (c) is new. Under AW 111 a copy of a general court-martial record is given to the accused if he demands it. Under Navy practice, the accused is automatically given a copy of the record of a general court martial. This article goes further in that a copy of the record of a general or special court martial is required to be given to the accused. It is felt to be appropriate that the accused should have a copy of such records for his personal use. If such records contain classified matter, means of safekeeping should be provided.

References: AW 33, 34, 111; AGN, articles 34, 64; proposed AGN, articles 16 (e), 21, 29.

*Article 55. Cruel and unusual punishments prohibited*

This article prevents punishment by flogging, branding, marking, or tattooing on the body, and prohibits the use of irons, single or double, except for the purpose of safe custody. Generally speaking, it reenacts existing provisions of law.

References: AW 41; proposed AGN, article 31.

*Article 56. Maximum limits*

This article authorizes the President to establish maximum limits of punishment for any offense, except one for which a mandatory punishment is prescribed.

References: AW 45; proposed AGN article 33 (b).

*Article 57. Effective date of sentences*

This article is new. Subdivision (a) prohibits the forfeiture of pay or allowances becoming due before the date of approval by the convening authority. Formerly an Army court-martial sentence could forfeit such earnings. In addition, subdivision (a) permits the forfeiture of pay and allowances becoming due after the date of approval by the convening authority but before the date of final approval by the Secretary, where such final approval is necessary. It is felt appropriate that where an accused is sentenced to both forfeiture and confinement, the forfeiture should reach all pay becoming due while the accused is in confinement awaiting final approval of the sentence. Under article 71 such pay cannot be taken until the sentence is ordered executed after any such required final approval.

Subdivision (b) requires a sentence of confinement to begin to run on the date that it is adjudged even though the accused is not actually in confinement, unless the sentence is suspended.

AW 16 has been held to prohibit the forfeiture of pay of an accused until the sentence has been finally approved. This has resulted in a prisoner under sentence of a court-martial drawing full pay until a dismissal or discharge is finally approved. The proposed Navy AGN would make all sentences of forfeiture or confinement effective as soon as adjudged.

References: AW 16, 47 (d); proposed AGN, article 39.

*Article 58. Execution of confinement*

This article authorizes any sentence of confinement adjudged by a court martial or other military tribunal to be carried into execution by confinement in any place of confinement under the control of any of the armed forces. In addition, it authorizes confinement in any penal or correctional institution under the control of the United States or which the United States may be allowed to use.

Subdivision (a) is derived from AGN, article 7, which permits the Navy to transfer court-martial prisoners to institutions under the control of the Department of Justice. The Navy has found this practice to be beneficial both to the service and to the prisoner. Both the Army and Navy officers in charge of correctional policies recommend the adoption of subdivision (a). It is the policy of the armed forces to segregate youthful and rehabilitable prisoners from the hardened criminals and incorrigibles and to provide for the maximum rehabilitation of prisoners for the purpose of restoration to duty or successful adjustment in civil life. However, due to lack of facilities and personnel with long and continuous experience in the highly technical and specialized phases of penology, the armed forces have serious handicaps in dealing with prisoners with long civilian criminal records, criminal psychopaths, sex deviates, violent incorrigibles, and other prisoners requiring special treatment. The Army in operating under AW 42 has met with great difficulty in segregating the varied types of prisoners and in giving them specialized treatment. It is felt that the rehabilitation of prisoners who create special problems could be expedited by transferring them to the highly specialized institutions under control of the Department of Justice, which range from training schools and reformatories to major penitentiaries and provide for the treatment of prisoners according to their needs.

From past experience, the services have found that the type of treatment suited for individuals does not depend on the type of offense or on the length of the sentence. Many of the prisoners who cause special problems in disciplinary barracks are those convicted of military offenses, such as a. w. o. l. or desertion.

Subdivision (b) incorporates the second proviso of AW 37 and conforms to present Navy practice.

References: AW 37, 42; AGN, article 7.

*Article 59. Error of law; Lesser included offense*

This article permits a reviewing authority to sustain a finding of guilty even though error has been committed when it can be determined that the error does not materially prejudice the substantial rights of the accused. It likewise authorizes any reviewing authority to approve or affirm so much of the finding as includes a lesser included offense.

Subdivision (a) is adapted from AW 37. In light of certain new procedural requirements in this code, such as the requirement that the

law officer of a general court martial instruct the court as to the elements of the offense, this subdivision is an extremely important one and should be given full force and effect. On the matter of technical errors NC and B, section 472 contains the following statement:

If there has been no miscarriage of justice, the finding of the court should not be set aside or a new trial granted because of technical errors or defects which do not affect the substantial rights of the accused.

Subdivision (b) is taken from AW 47 (f), 49 (a) and article 39 (d), (e) of the proposed AGN. MCM, paragraph 78 (c) defines a lesser included offense as follows:

The test as to whether an offense found is necessarily included in that charged is that it is included only if it is necessary in proving the offense charged to prove all the elements of the offense found.

References: AW 37, 47 (f), 49 (a); proposed AGN, article 39 (d), (e); NC and B, section 472.

#### *Article 60. Initial action on the record*

This article prescribes who may take initial action on court-martial records. It is taken principally from AW 47 (e). There is no similar provision in the AGN, but NC and B, section 479 provides that the reviewing power vests in the office, not the person, of the authority so acting.

References: AW 35, 47 (e); NC and B, section 479.

#### *Article 61. Same—General court-martial records*

The convening authority is herein required to refer the record of every general court martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. The convening authority may ignore the written opinion of the staff judge advocate; however, such opinion shall go forward with the record and shall be given such weight as subsequent reviewing authorities may deem appropriate.

The article is drawn principally from AW 47 (c). The requirement that the convening authority refer the record to his staff judge advocate or legal officer is new for the Navy. The requirement that the staff judge advocate or legal officer write an opinion on the jurisdiction of the court in cases of acquittal conforms to present Army practice. (See art. 65 with reference to opinions and records in cases where there is a finding of guilty.)

References: AW 35, 47 (c).

#### *Article 62. Reconsideration and revision*

This article permits a convening authority to return a court-martial record to the court for reconsideration of a motion or ruling that does not amount to a finding of guilty. This refers to motions or rulings which do not go to the merits of the case and does not amount to an acquittal. For instance, the law officer may sustain a motion which invokes the statute of limitations when, in fact, the convening authority is able to prove beyond any doubt that the statute of limitations had not run.

The record may also be returned for the correction of an apparent error or omission in the record which can be rectified without material prejudice to the substantial rights of the accused.

In no case, however, may the record be returned for a reconsideration of a finding of not guilty or a ruling which amounts to a finding of

not guilty, or for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. This last situation is possible where a court has given less than the death penalty for the offense of spying in wartime, which carries a mandatory sentence of death.

No provision similar to subdivision (a) is found in either the AW or the AGN. Under present Army, Navy, and Air Force practice, however, the convening authority has the power set out in this subdivision. (See MCM, par. 64 (f) and NC and B, sec. 410.)

Subdivision (b) is based on AW 40. Under this subdivision the convening authority may return the record where the court has failed to prescribe a mandatory punishment or where it has found the accused guilty of a specification and not guilty of a charge and the specification sufficiently alleges a violation of some article. He may also return the record for correction of other errors, such as clerical errors.

References: AW 40; proposed AGN, article 39 (i); MCM, paragraphs 64 (f), 83, 87 (b); NC and B, sections 410, 458-468.

#### *Article 63. Rehearings*

This article gives the convening authority the authority to order a rehearing in cases in which he disapproves the findings and sentence, except those cases where there is a lack of sufficient evidence in the record to support the findings.

This article is adopted from AW 52. The Navy has no similar statutory provision. The Army term "rehearing" has been adopted to distinguish a proceeding under this article from the new trial specified in article 73.

Subdivision (a) provides, in conformance with the usual concept of double jeopardy, that the convening authority shall not order a rehearing where the prosecution has failed to establish a prima facie case—has failed, as a matter of law, to introduce sufficient evidence to warrant the finding. The phrase "evidence in the record" is intended to authorize rehearings where the prosecution has made its case on evidence which was improperly admitted at the trial, evidence for which there may well have been an admissible substitute.

Subdivision (b) contains the limitations on the sentence which can be adjudged by a court on rehearing, with an exception for mandatory sentences. Without this exception the court on rehearing could impose no sentence at all where the original sentence was less than that made mandatory for the offenses. For a mandatory sentence see article 133.

A rehearing is a continuation of the former proceeding, and if the original court had no jurisdiction in the case, none of the restrictions of this article apply to a subsequent trial on the same charges.

References: AW 52; NC and B, section 477.

#### *Article 64. Approval by the convening authority*

This article authorizes the convening authority to approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines should be approved.

It substantially conforms to present practice in all the armed forces. The convening authority can approve a finding only if he finds that it conforms to the weight of the evidence and that there has been no

error of law which materially prejudices the substantial rights of the accused. (See art. 59, commentary.) He may approve only so much of a finding as involves a finding of guilty of a lesser included offense. (See art. 59.) He may disapprove a finding or a sentence for any reason.

References: AW 47(c), (f); AGN, articles 33, 54, 64(d); proposed AGN, article 39(b).

*Article 65. Disposition of records after review by the convening authority*

This article prescribes the procedure which shall be followed by convening authorities in the disposition of court-martial records after they have taken final action on such records.

Subdivision (a) incorporates present Army practice. Navy practice is similar except that no opinion by the legal officer is required.

Subdivision (b) is derived from AW 36 except that the record may be sent directly to the Judge Advocate General. This alternative is permitted in order to provide for situations where no judge advocate or law specialist is assigned to the staff of the officer exercising general court-martial jurisdiction or where direct transmittal to the Judge Advocate General or a branch office would be more expeditious. Proposed AGN, article 39 (d) is similar to AW 36.

Subdivision (c) permits the review of other special and summary courts martial to be prescribed by regulations, subject to the requirement that all such records shall be reviewed by a law specialist or judge advocate (or lawyer in a Coast Guard case). The reason for this provision is that the volume of cases, the availability of law specialists and judge advocates, and the feasibility of reviewing records in the field may differ in the various armed forces.

The disposal of special and summary court-martial records is also left to regulation, because of the varying needs of the armed forces. It is intended, however, that such records shall be retained until no longer of use either to the armed force concerned or to the accused.

References: AW 35, 36; proposed AGN, articles 21, 39 (d), 39 (e).

*Article 66. Review by the Board of Review*

This article adopts the Army system of review by a formally constituted board. Required qualifications of the members are new, however, and a provision permitting civilian members has been added for the Coast Guard. (See subdivision (a).)

Review of all the cases specified in subdivision (b) is automatic, whether or not the sentence is suspended. The types of cases receiving automatic review by the Board are substantially the same as those under the present Articles of War except that for sentences involving penitentiary confinement there have been substituted sentences involving confinement for more than 1 year. This conforms to changes in the system of confinement in article 58. For review of other cases by a Board of Review see article 69.

The Board of Review shall affirm a finding of guilty of an offense or a lesser included offense (see art. 59) if it determines that the finding conforms to the weight of the evidence and that there has been no error of law which materially prejudices the substantial rights of the accused. (See art. 59, commentary.) The Board may set aside, on the basis of the record, any part of a sentence, either because it is illegal or because it is inappropriate. It is contemplated that this

power will be exercised to establish uniformity of sentences throughout the armed forces. (See art. 67 (g).)

Subdivision (d) deals with the power to order a rehearing. (See art. 63.)

References: AW 50 (a), (d), (e), (g); 51, 52; proposed AGN, article 39 (e), (f).

#### *Article 67. Review by the Court of Military Appeals*

This article is new although the concept of a final appellate tribunal is not. Proposed AGN, article 39 (g) provides for a board of appeals while AW 50 (a) provides for a judicial council. Both of these tribunals, however, are within the Department. The Court of Military Appeals provided for in this article is established in the National Military Establishment and is to review cases from all the armed forces. The members are to be highly qualified civilians and the compensation has been set to attract such persons.

Automatic review before the Court of Military Appeals is provided for all cases which must be approved by the President. (See AW 71.) The Judge Advocate General may direct that a case be reviewed by the court, and an accused may request review and will receive it where the court finds good cause.

The time limits specified in subdivision (c) are necessary to eliminate undue delay in the execution of sentences.

The Court of Military Appeals takes action only with respect to matters of law. In this it differs from the final appellate tribunals now set up in or proposed for the Departments. It may act only with respect to the findings and sentence as approved by the convening authority. If the Board of Review has set aside a finding as against the weight of the evidence this decision cannot be reconsidered by the court. If, on the other hand, the Board has set a case aside because of the improper introduction of evidence or because of other prejudicial error, the Court of Military Appeals may reverse if it finds there has been no such error.

The court shall affirm the findings and the sentence if it determines that, with respect to the matters which it considers, there has been no error of law which materially prejudices the substantial rights of the accused. (See art. 59, commentary.) It may affirm so much of a finding of guilty as involves a finding of guilty of a lesser included offense. (See art. 59.) The only action which the court may take with respect to the sentence is to determine whether or not it is within legal limits.

As to the power to order a rehearing covered in subdivision (e), see article 63.

Subdivision (g) assures an annual review of sentence policies of the armed forces. This is provided to assure uniformity.

References: AW 48, 49, 50 (a), (c), (g), 51, 52; proposed AGN, article 39 (g).

#### *Article 68. Branch offices.*

This article provides the authority for the President to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any distant command, and to establish in such branch office one or more boards of review.

Subdivision (a) incorporates AW 50 (c) with modifications to conform to the review under this code. The AGN contains no similar

provision, but the Navy feels that it would be useful in times of emergency.

References: AW 50 (c).

*Article 69. Review in the Office of the Judge Advocate General*

This article provides for the appellate review in the Office of the Judge Advocate General of every record of trial by general court martial in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by article 66.

This article conforms to AW 50 (f). Since these cases involve minor sentences, no review by the Court of Military Appeals is felt to be appropriate.

References: AW 50 (f); proposed AGN, article 39 (e).

*Article 70. Appellate counsel*

Appellate review having been provided for in other provisions of the code, this article provides appellate counsel for both the Government and the defense.

This article is new and is included in the code in order that the accused may be represented on review. Such representation will assure that the accused's case will be thoroughly considered. Appellate counsel should have the qualifications of counsel before a general court martial. (See art. 27 (b).)

*Article 71. Execution of sentence; suspension of sentence*

Subdivision (a) is derived from AW 48 (a). Proposed AGN, article 39 (a) is similar except that sentences involving a flag officer are treated in the same manner as sentences involving other officers. The words "as he sees fit" are intended to give the President absolute discretion in determining the amount of the sentence to be approved by him.

Subdivision (b) is derived from AW 48 (c) and AW 44. Proposed AGN, article 39 (a) requires a dismissal to be confirmed by the President, or by the Secretary when empowered by the President. It is felt appropriate, however, to place this power initially in the Secretary of the Department and to allow delegation of this power in order to provide for periods of expansion of the armed forces. It was felt more appropriate to place the power to change a dismissal to reduction to ranks in the Secretary rather than in a court martial as provided in AW 44.

Subdivision (c) is derived from AW 48 (c) and AW 50 (e). Sentences required to be affirmed by a Board of Review may not be ordered executed until such review and any further review by the Court of Military Appeals under article 67 is completed. Thus, such sentences may be ordered executed 30 days after the accused has been notified of the decision of the Board of Review if he has not petitioned the court for review within that period.

Subdivision (d) is derived from AW 47 (d). The proposed AGN would require execution of sentences not extending to punishments specified in subdivisions (a), (b), and (c) to be executed upon announcement by the court. It is felt appropriate, however, to require review by the convening authority before ordering execution of any sentence. The convening authority is given power to suspend sentences other than death sentences. (See art. 74 as to the power of other officers to suspend sentences.)

References: AW 44, 47 (d), 48 (a), 48 (c), 49, 50 (e); proposed AGN, Article 39 (a), 39 (c).

*Article 72. Vacation of suspension*

This article is new. It applies where a sentence has been suspended pending good behavior of the accused—that is, where the accused is a probationer. Under present Navy practice, the commanding officer of a probationer has authority to vacate probation whenever he deems the conduct of the probationer unsatisfactory. Under Army practice, an officer who has the power to convene a court of the kind which adjudged the sentence may similarly vacate probation.

This article requires that where the vacating of the suspension of a serious sentence is contemplated, a record of the facts justifying the vacating action will be made and these facts will be given consideration by two officers.

Where the original sentence includes a bad-conduct or dishonorable discharge, or confinement in excess of 1 year, such vacation will not be effective to execute the sentence until the review provided in articles 66 and 67 has been completed. Where the suspended sentence includes a dismissal, the Secretary of the Department must act before the dismissal may be executed, whether or not he has previously approved it.

References: AW 51 (b); MCM, paragraph 94; NC and B, section 476; Keffe report, pages 313-318.

*Article 73. Petition for a new trial.*

This article provides for a petition for a new trial as provided in AW 53 and in proposed AGN, article 39 (g). Action on the petition is to be taken by a board of review or the Court of Military Appeals if the case is being reviewed or is to be reviewed by such tribunal. Otherwise the Judge Advocate General shall either deny or grant the new trial. (See art. 75 as to restoration of rights, privileges, and property after a new trial.)

References: AW 53; proposed AGN, article 39 (g).

*Article 74. Remission and suspension*

Under this article the Secretary of a department may review the sentence of any court martial, which will give him clemency and parole powers as well as ultimate control of sentence uniformity. Action hereunder may be taken without regard to whether the person acting has previously approved the sentence.

References: AW 51 (b); proposed AGN, article 39 (h).

*Article 75. Restoration*

This article is new in that restoration of rights, privileges, and property is mandatory and in that restitution of forfeitures previously collected is authorized. If a new trial or rehearing is ordered, restoration is to be made in regard to such part of the original sentence as is not adjudged upon the new trial or rehearing.

Under subdivision (b), the Secretary of the Department shall order an administrative discharge substituted for a bad-conduct or dishonorable discharge which has not been sustained on a new trial unless the accused is to be restored to duty.

Subdivision (c) requires an administrative discharge to be substituted for a dismissal which is not sustained on a new trial. In addition, the President is given authority to reappoint the accused

to such rank and precedence as he believes will correct the injustice of the dismissal.

This article applies not only to new trials but also to all cases where an executed or partly executed sentence is set aside or disapproved under the provisions of this code.

References: AW 53.

*Article 76. Finality of court-martial judgments*

This article is derived from AW 50 (h) and is modified to conform to terminology used in this code. Subject only to a petition for a writ of habeas corpus in Federal court, it provides for the finality of court-martial proceedings and judgments.

References: AW 50 (h).

*Articles 77-134. Punitive articles*

The punitive articles in the proposed code are contained in articles 77-134. In the preparation of the proposed code, it was noted that there were some differences in the punitive articles as defined in the Articles of War as contrasted to the same or similar offenses as defined in the Articles for the Government of the Navy. Generally speaking, the Articles of War define the so-called military offenses. The Articles for the Government of the Navy likewise define most of the military offenses, but in neither case were all of the offenses defined. It is also true that some crimes are peculiar to one service and are not provided for in the other. Most of the civil types of crimes are not defined in existing military law and there are some differences in the crimes which are defined. The civil types of crimes in the Articles of War, as defined by the Manual, are generally based on the common-law definition of the State of Maryland which, as a matter of fact, is very close to Federal definitions of the same offenses. Comparable crimes are enumerated in the Articles for the Government of the Navy but are not therein defined. However, Naval Courts and Boards, which defines the crimes, generally follows the Federal statutory definitions. All of these differences have been reconciled in writing the punitive articles of this code.

Neither the Articles of War nor the Articles for the Government of the Navy provide a statutory definition for principals, accessories, conviction of lesser included offense, attempts, conspiracy, and solicitation. Each of these is statutorily defined in articles 77-82, respectively.

Article of War 96 and AGN, article 22 (a), are both general articles. These provisions have been retained in article 134 of this code. This will permit the punishment of "disorders and neglects to the prejudice of good order and discipline in the armed forces, and all conduct of a nature to bring discredit upon the armed forces." It will also authorize trial by court martial for violation of State and Federal crimes which are not enumerated as offenses under this code.

*Articles 135-140*

These articles include miscellaneous provisions which are pertinent to the code.

*Article 135. Courts of inquiry*

This article is a combination of Army and Navy provisions as to courts of inquiry. Army courts of inquiry, at present, may only be

convened at the request of the person whose conduct is to be investigated. Naval courts of inquiry, however, may be convened for any formal investigation. Subdivision (a) grants this broader power.

Subdivision (b) does not change the number of members of courts of inquiry in either service, but does provide for a counsel whose duties are to assist the court in matters of law, presentation of evidence, and in the keeping of the record.

Subdivision (c) adopts the substance of proposed AGN, article 42. The provision in regard to employees of the National Military Establishment is included in order to allow employees whose conduct may be involved in the inquiry to intervene in order to protect their rights or reputations.

Subdivisions (d) and (e) conform to present Army and Navy practice.

Subdivision (f) is derived from AW 101. Under Navy practice witnesses may be but are not required to be sworn.

Subdivisions (g) and (h) conform to Army and Navy practice.

References: AW 97-103; proposed AGN, articles 42, 43, 44.

*Article 136. Authority to administer oaths and to act as notary*

This article is a combination and modification of AW 114 and AGN, article 69. Only certain persons specified are given notarial powers, as it is believed inappropriate that persons having temporary powers to administer oaths should notarize legal instruments which may have drastic legal consequences if incorrectly drawn. The persons specified in subdivision (a) are believed to have legal experience or experience in personnel matters. Commanding officers of the Navy and Coast Guard are included in subdivision (a) as Navy and Coast Guard commands do not have adjutants and personnel adjutants.

References: AW 114; AGN, article 69; proposed AGN, article 47 (a).

*Article 137. Articles to be explained*

This article is derived from AW 110, but requires the articles to be carefully explained instead of being read, as it is felt that a careful explanation is of more value than a mere reading. The language would also permit training films to be used to explain the code. The requirement that the code be read every six months is omitted as it is felt that a thorough indoctrination is more beneficial than a required reading every 6 months.

References: AW 110; AGN, article 20 (tenth).

*Article 138. Complaints of wrongs*

This article provides a procedure whereby any member of the armed forces who believes himself wronged by his commanding officer may make complaint to the officer exercising general court-martial jurisdiction, which officer must examine into the complaint and take such measures for redressing the wrong complained of as the circumstances may justify.

This article is adopted from AW 121. The Navy has provided a similar procedure by regulation.

References: AW 121; United States Navy Regulations, article 99.

*Article 139. Redress of injuries to property*

This article is a redraft of AW 105 with changes to permit the Secretary of the Department to prescribe the situations and procedures for redress. It is not intended to affect the provisions of 40 Statute

705 (1918) as amended by 41 Statute 132 (1919), 34 United States Code, section 600 (1946), (claims for damages not occasioned by vessels) or the provisions of 28 United States Code, section 2671 et seq. (1948), (tort claims) or similar enactments.

References: AW 105.

*Article 140. Delegation by President*

This article authorizes the President to delegate his authority under this code and, further, to provide for the subdelegation of such authority. It incorporates the language of section 10 (c), Public Law 759, Eightieth Congress, second session (June 24, 1948).

The remaining provisions of the proposed legislation are contained in section 2 through section 14. Some provisions of these remaining sections have heretofore been included in either the Articles of War or the Articles for the Government of the Navy. It is considered desirable to preserve these provisions in the statutory law; however, they are not considered to be germane to the provisions of a uniform code of justice. By separating them from section 1, which includes all of the provisions for the Uniform Code of Justice, they will automatically be excluded from the code but preserved as statutory law in an appropriate place in the United States Code.

SECTION 2

This is a savings provision which will preserve the validity of all the remaining articles of this act in the event any article or part thereof should be declared invalid.

SECTION 3

Throughout this act abbreviated titles are used for the various sections, articles and parts. These are known as catch lines and this precludes any inference of a legislative construction being placed on such catch lines.

SECTION 4

This section insures that the prosecution of offenses which are a violation of laws which will be repealed by this act shall be completed under such laws in the same manner and with the same effect as if this act had not been passed.

SECTION 5

This section prescribes the effective date of this act and insures that a period of 12 months will be available to the armed forces for the preparation of a manual to supplement the act. One exception is provided, to wit: Section 12, which authorizes the Judge Advocate General of any armed force to grant a new trial under certain conditions for offenses committed during World War II. Section 12 is to become effective on the date of the approval of this act.

SECTION 6

It is considered desirable to retain as statutory provisions the provisions of AW 107, 108, 112, 113, 119, and 120 (41 Stat. 809, 810, 811), but to delete them as provisions of this code. They are not considered

germane to a uniform code of justice but are considered appropriate statutory provisions. This section will accomplish the desired result.

## SECTION 7

Existing Navy law makes provision for the retention of command authority in the commanding officer of a naval vessel or aircraft when the crew of such vessel or aircraft have become separated from their vessel or aircraft by means of its wreck, loss, or destruction. This section preserves that authority.

It also preserves the authority of officers of separate marine organizations when embarked on a naval vessel, not a part of the authorized complement thereof, subject only to the paramount authority of the commanding officer of any such vessel.

Subsections (c), (d), and (e) refer to commanders' duties of example and correction, divine service, and reverent behavior. These are provisions which are of historical existence to the Navy and which the Navy desires to retain as statutory provisions.

## SECTION 8

• This section sets forth a standard form of oath which shall be taken by all persons who enlist in any armed force of the United States.

## SECTION 9

This section recognizes the diversity of citizenship which authorizes removal of a civil suit from a State jurisdiction to a Federal jurisdiction. It authorizes the removal of any civil or criminal prosecution from a State to a Federal jurisdiction when a member of the armed forces is a party to such action on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the armed forces thereof, or under the law of war.

## SECTION 10

This section provides the authority for the dismissal of officers from the armed forces and prescribes the conditions under which the President may drop an officer from the rolls of any armed force.

## SECTION 11

Existing law provides that review of court-martial cases involving midshipmen shall be reviewed by the convening authority and by the Secretary of the Navy. The system of review which is prescribed in this Code makes it necessary that existing law on this subject be amended to conform to the new review provisions. This section accomplishes that purpose.

## SECTION 12

This section prescribes the conditions under which World War II personnel who were convicted of court-martial offenses may be granted a new trial. Such provisions were written into Army and

Air Force law in Public Law 759, Eightieth Congress (AW 53, as amended), and the present section merely extends a comparable right to other personnel of the armed forces.

## SECTION 13

This section prescribes the qualifications of the judge advocates general. Under existing law, there are no legal qualifications whatsoever for the judge advocates general. This section makes it mandatory that the judge advocates general be members of a State or Federal bar and have a prescribed amount of legal experience in a Judge Advocate's Corps, department, or office. In computing the number of years required by this section, it is intended that the years spent in obtaining a legal education shall be excluded. It is intended that all experience obtained as a result of assignment to legal duties in furtherance of the administration of duties of the judge advocates general shall be included, regardless of the place of assignment.

## SECTION 14

This is a general repealer section.

The Bureau of the Budget has advised that the proposed bill is fully in accord with the program of the President and the Secretary of Defense endorses the proposed legislation as is indicated by his letter which is hereto attached and made a part of the record.

THE SECRETARY OF DEFENSE,  
*Washington, February 8, 1949.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
*Washington, D. C.*

DEAR MR. SPEAKER: There is transmitted herewith, on behalf of the National Military Establishment, a draft of a proposed bill to unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard and to enact and establish a Uniform Code of Military Justice.

The proposed code is based on a study made by a special committee in this office, of which Prof. Edmund M. Morgan, Jr., of the Harvard Law School was chairman. The code covers both the substantive and procedural law governing military justice and its administration in all the armed forces of the United States and is uniformly applicable in all its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace.

The proposed code provides the sole statutory authority for—

- (1) The infliction of limited disciplinary penalties for minor offenses without judicial action;
- (2) The establishment of pretrial and trial procedure;
- (3) The creation and constitution of three classes of courts martial corresponding to those now in existence;
- (4) The eligibility of members of each of the courts and the qualifications of its officers and counsel;
- (5) The review of findings and sentence and the creation and constitution of the reviewing tribunals; and
- (6) The listing and definition of offenses, redrafted and rephrased in modern legislative language.

Attention is called to the provisions of the code which are designed to provide for uniformity in the administration of military justice, to those designed to assure the accused a fair trial, to those designed to prevent undue control or interference with the administration of military justice, and to those designed to preserve appropriate military functions.

Among the provisions designed to insure uniformity are the following:

- (1) The offenses made punishable by the code are identical for all armed forces;
- (2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces;

(3) The procedure for general courts martial is identical as to institution of charges, pretrial investigation, action by the convening authority, review by the Board of Review, and review by the Judicial Council in all the armed forces;

(4) The rules of procedure at the trial, including modes of proof, are equally applicable to all the armed forces;

(5) The Judge Advocates General of the three departments are required to make uniform rules of procedure for the Board of Review in each department;

(6) The required qualifications for members of the court, law officer, and counsel are identical for all the armed forces;

(7) The single Judicial Council, which finally decides all questions of law, is the court of last resort for each of the armed forces; and also acts with the Judge Advocates General of the three departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

Among the provisions designed to insure a fair trial are the following:

#### *General courts martial*

(1) A pretrial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf. It has some features of preliminary hearing and some of pretrial discovery as used in the civil courts.

(2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.

(3) A mandatory provision for competent, legally trained counsel at the trial for both the prosecution and the defense.

(4) A prohibition against requesting any statement from the accused without warning, and against compelling self-incrimination, and against reception in evidence of improperly obtained statements.

(5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.

(6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.

(7) A provision whereby voting on challenges, findings, and sentence is by secret ballot of the members of the court.

(8) A provision requiring the law officer to instruct the court on the record concerning the elements of the offense, presumption of innocence, and the burden of proof.

(9) A provision for an automatic review of the trial record for errors of law and of fact by a Board of Review with the right of the accused to be represented by legally competent counsel.

(10) A provision for the review of the record for errors of law by the Judicial Council. This review is automatic in the case where the sentence is death or dismissal and is upon petition showing probable error of law where the sentence involves more than 1 year's confinement, with the right to be represented by competent counsel.

(11) A prohibition against receiving pleas of guilty in capital cases.

#### *Special courts martial*

In addition to certain of the above provisions which also apply to special courts martial, there is provided as follows:

(1) The trial counsel and defense counsel must be equally qualified.

(2) In cases where a bad-conduct discharge has been imposed, a full stenographic transcript must be taken and the case is reviewed in the same fashion as a general court-martial record.

(3) Peremptory challenge and voting by secret ballot is provided as in a general court martial.

(4) Review by judge advocate or legal officer is required.

#### *Summary courts martial*

(1) Provision is made for permitting an accused to refuse trial by summary court upon request.

(2) Review by a judge advocate or legal officer is required.

Among some of the provisions designed to prevent interference with the due administration of justice are the following:

(1) The convening authority may not refer charges for trial until they are found legally sufficient by the staff judge advocate or legal officer.

(2) The staff judge advocate or legal officer is authorized to communicate directly with the Judge Advocate General.

(3) All counsel at a general court-martial trial are required to be lawyers and to be certified by the Judge Advocate General as qualified to perform their legal duties.

(4) The law officer—a competent lawyer—rules on all questions raised at the trial, except on a motion for a directed verdict and on the issue of the accused's sanity.

(5) The convening authority must not act on a finding or sentence of a general court martial without first obtaining the advice of his staff judge advocate or legal officer.

(6) The Board of Review, situated in the office of the Judge Advocate General and removed from the convening authority, is composed of legally trained men and reviews the trial record for errors of law and of fact.

(7) The Judicial Council is composed of civilians and passes finally on all questions of law.

(8) When counsel appear before the Board of Review and the Judicial Council, both parties must be represented by qualified lawyers.

(9) Censure by a commanding officer of a court martial or any member or officer thereof because of any judicial action of the court or any member or officer is forbidden and any attempt improperly to influence official action in any aspect of a trial or its review is prohibited.

#### *Elements of command*

Among the command functions which are found in the present Articles of War and Articles for the Government of the Navy, the following provisions have been retained:

(1) Commanding officers refer the charges in general, special and summary courts martial and convene the courts.

(2) Commanding officers appoint the members of the courts.

(3) Commanding officers appoint the law officer and counsel for the trial.

(4) Commanding officers retain full power to set aside findings of guilty and to modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of the sentence imposed.

(5) The powers of commanding officers at mast and company punishment are retained for minor offenses which require prompt action and for which comparatively light punishments can be imposed. The procedural safeguards in this type of nonjudicial punishment are considerably less than in the courts martial, but are believed to be reasonably adequate.

I regard this proposed bill as an outstanding example of unification in the armed services. In my opinion, the proposed bill is well-designed to protect the rights of those subject to it, will increase public confidence in military justice, and will not impair the performance of military functions. Accordingly, I strongly urge its passage by the Congress.

The Bureau of the Budget has advised me that the proposed bill is fully in accord with the program of the President.

Sincerely yours,

JAMES FORRESTAL.

#### CHANGES IN EXISTING LAWS

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown below. Existing law proposed to be omitted is enclosed in black brackets; new matter amending existing law is printed in italics; existing law in which no change is proposed is shown in roman. Bold-face paragraphs identify statutes repealed or amended. Tables following Articles of War and Articles for the Government of the Navy are for cross reference purposes only.

**The Articles of War (sec. 1, ch. II, act of June 4, 1920 (41 Stat. 787), as amended.) (See 10 U. S. C. A. 1471-1593):**

【The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States.

### 【I. PRELIMINARY PROVISIONS

【ART. 1. Definitions.—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

【(a) The word “officer” shall be construed to refer to a commissioned officer; 【(b) The word “soldier” shall be construed as including a noncommissioned officer, a private, or any other enlisted man or woman;

【(c) The word “company” shall be construed as including a troop, battery, or corresponding unit of the ground or air forces;

【(d) The word “battalion” shall be construed as including a squadron or corresponding unit of the ground or air forces;

【(e) The word “cadet” shall be construed to refer to a cadet of the United States Military Academy.

【ART. 2. Persons Subject to Military Law.—The following persons are subject to these articles and shall be understood as included in the term “any person subject to military law,” or “persons subject to military law,” whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article 2, subparagraph (c), shall be construed to apply to any person under the United States Naval jurisdiction unless otherwise specifically provided by law.

【(a) All officers, warrant officers, and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

【(b) Cadets;

【(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

【(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

【(e) All persons under sentence adjudged by courts-martial;

【(f) All persons admitted into the Regular Army Soldiers’ Home at Washington, District of Columbia.

### 【II. COURTS-MARTIAL

【ART. 3. Courts-Martial Classified.—Courts-martial shall be of three kinds, namely:

【First, general courts-martial;

【Second, special courts-martial; and

【Third, summary courts-martial.

### 【A. COMPOSITION

【ART. 4. Who May Serve on Courts-Martial.—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.

【All warrant officers in the active military service of the United States and warrant officers in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts-martial for the trial of warrant officers and enlisted persons, and persons in this category, shall be detailed for such service when deemed proper by the appointing authority.

【Enlisted persons in the active military service of the United States or in the active military service of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special

courts-martial for the trial of enlisted persons when requested in writing by the accused at any time prior to the convening of the court. When so requested, no enlisted person shall, without his consent, be tried by a court the membership of which does not include enlisted persons to the number of at least one third of the total membership of the court.

【When appointing courts-martial the appointing authority shall detail as members thereof those officers of the command and when eligible those enlisted persons of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers and enlisted persons having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of minority membership thereof. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution.

【ART. 5. General Courts-Martial.—General courts-martial may consist of any number of members not less than five.

【ART. 6. Special Courts-Martial.—Special courts-martial may consist of any number of members not less than three.

【ART. 7. Summary Courts-Martial.—A summary court-martial shall consist of one officer.

#### 【B. BY WHOM APPOINTED

【ART. 8. General Courts-Martial.—The President of the United States, the commanding officer of a Territorial department, the Superintendent of the Military Academy, the commanding officer of an Army group, an Army, an Army corps, a division, a separate brigade, or corresponding unit of the Ground or Air Forces, or any command to which a member of the Judge Advocate General's Corps is assigned as staff judge advocate, as prescribed in article 47, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and may in any case be appointed by superior authority when by the latter deemed desirable.

【The authority appointing a general court-martial shall detail as one of the members thereof a law member who shall be an officer of the Judge Advocate General's Corps or an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and certified by the Judge Advocate General to be qualified for such detail: *Provided*, That no general court-martial shall receive evidence or vote upon its findings or sentence in the absence of the law member regularly detailed. The law member, in addition to his duties as a member, shall perform the duties prescribed in article 31 hereof and such other duties as the President may by regulation prescribe.

【ART. 9. Special Courts-Martial.—The commanding officer of a district, garrison, fort, camp, station, or other place where troops are on duty, and the commanding officer of an Army group, an Army, an Army corps, a division, brigade, regiment, detached battalion, or corresponding unit of Ground or Air Forces, and the commanding officer of any other detached command or group of detached units placed under a single commander for this purpose may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed advisable.

【ART. 10. Summary Courts-Martial.—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: *Provided*, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

【ART. 11. Appointment of Trial Judge Advocates and Counsel.—For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel, and one or more assistant trial judge advocates and one or more assistant defense counsel when necessary: *Provided*, That the trial judge advocate and defense counsel of each general court-martial shall, if available, be members of the Judge Advocate General's Corps or officers who are members of the bar of a Federal court or of the highest court of a State of the United States: *Provided further*, That in all cases in which the officer ap-

pointed as trial judge advocate shall be a member of the Judge Advocate General's Corps, or an officer who is a member of the bar of a Federal court or of the highest court of a State, the officer appointed as defense counsel shall likewise be a member of the Judge Advocate General's Corps or an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States: *Provided further*, That when the accused is represented by counsel of his own selection and does not desire the presence of the regularly appointed defense counsel or assistant defense counsel, the latter may be excused by the president of the court: *Provided further*, That no person who has acted as member, trial judge advocate, assistant trial judge advocate or investigating officer in any case shall subsequently act in the same case as defense counsel or assistant defense counsel unless expressly requested by the accused: *Provided further*, That no person who has acted as member, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act in the same case as a member of the prosecution: *Provided further*, That no person who has acted as member, trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate to the reviewing or confirming authority upon the same case.

### C. JURISDICTION

**ART. 12. General Courts-Martial.**—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles, and any other person who by the law of war is subject to trial by military tribunals: *Provided*, That general courts-martial shall have power to adjudge any punishment authorized by law or the custom of the service including a bad-conduct discharge.

**ART. 13. Special Courts-Martial.**—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles: *Provided*, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interests of the service so require, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses herein prescribed.

[Special courts-martial shall not have power to adjudge dishonorable discharge or dismissal, or confinement in excess of six months, nor to adjudge forfeiture of more than two-thirds pay per month for a period of not exceeding six months: *Provided*, That subject to approval of the sentence by an officer exercising general court-martial jurisdiction and subject to appellate review by The Judge Advocate General and appellate agencies in his office, a special court-martial may adjudge a bad-conduct discharge in addition to other authorized punishment: *Provided further*, That a bad-conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings of and testimony taken by the court is taken in the case.

**ART. 14. Summary Courts-Martial.**—Summary courts-martial shall have power to try any person subject to military law, except an officer, a warrant officer, or a cadet, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a special court-martial: *Provided further*, That the President may, by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

[Summary courts-martial shall not have power to adjudge confinement in excess of one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay.

**ART. 15. Jurisdiction not Exclusive.**—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect to offenders or offenses that by statute or by the law of war be triable by such military commissions, provost courts, or other military tribunals.

**ART. 16. Persons in the Military Service—How Triable.**—Officers shall be triable only by general and special courts-martial and in no case shall a person in the military service, when it can be avoided, be tried by persons inferior to him in rank. No enlisted person may sit as a member of a court-martial for the trial of another enlisted person who is assigned to the same company or corresponding military unit.

[No person subject to military law shall be confined with enemy prisoners or any other foreign nationals outside of the continental limits of the United

States, nor shall any defendant awaiting trial be made subject to punishment or penalties other than confinement prior to sentence on charges against him.

#### [D. PROCEDURE

**[ART. 17. Trial Judge Advocate to Prosecute; Counsel to Defend.**—The trial judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented in his defense before the court by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by the defense counsel duly appointed for the court pursuant to Article 11. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, of the court, shall, if the accused so desires, act as his associate counsel.

**[ART. 18. Challenges.**—Members of a general or special court-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to one peremptory challenge; but the law member of the court shall not be challenged except for cause.

**[ART. 19. Oaths.**—The trial judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate and assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the trial judge advocate and to each assistant trial judge advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of a trial judge advocate, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

**[ART. 20. Continuances.**—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

**[ART. 21. Refusal or Failure to Plead.**—When an accused arraigned before a court-martial fails or refuses to plead, or answers foreign to the purpose, or after a plea of guilty makes a statement inconsistent with the plea, or when it appears to the court that he entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, the court shall proceed to trial and judgment as if he had pleaded not guilty.

**[ART. 22. Process to Obtain Witnesses.**—Every trial judge advocate of a general or special court-martial and every summary court-martial shall have power to

issue the like process to compel witnesses to appear and testify which courts of the United States having criminal jurisdiction may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions. Witnesses for the defense shall be subpoenaed, upon request by the defense counsel, through process issued by the trial judge advocate, in the same manner as witnesses for the prosecution.

**ART. 23. Refusal to Appear or Testify.**—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purposes; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses: *Provided further*, That every person not subject to military law, who before any court-martial, military tribunal, or military board, or in connection with, or in relation to any proceedings or investigation before it or had under any of the provisions of this Act, is guilty of any of the acts made punishable as offenses against public justice by any provision of chapter 6 of the Act of March 4, 1909, entitled "An Act to codify, revise, and amend the penal laws of the United States" (volume 35, United States Statutes at Large, p. 1088), or any amendment thereof, shall be punished as therein provided.

**ART. 24. Compulsory Self-Incrimination Prohibited.**—No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him or to answer any question not material to the issue or when such answer might tend to degrade him.

The use of coercion or unlawful influence in any manner whatsoever by any person to obtain any statement, admission or confession from any accused person or witness, shall be deemed to be conduct to the prejudice of good order and military discipline, and no such statement, admission, or confession shall be received in evidence by any court-martial. It shall be the duty of any person in obtaining any statement from an accused to advise him that he does not have to make any statement at all regarding the offense of which he is accused or being investigated, and that any statement by the accused may be used as evidence against him in a trial by court-martial.

**ART. 25. Depositions—When Admissible.**—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to, or, in foreign places, because of non-amenability to process, refused to, appear and testify in person at the place of trial or hearing: *Provided*, That testimony by deposition may be adduced for the defense in capital cases: *Provided further*, That a deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the appointing authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial: *And provided further*, That at any time after charges have been signed as provided

in article 46, and before the charges have been referred for trial, any authority competent to appoint a court-martial for the trial of such charges may designate officers to represent the prosecution and the defense and may authorize such officers, upon due notice, to take the deposition of any witness, and such deposition may subsequently be received in evidence as in other cases.

**ART. 26. Depositions—Before Whom Taken.**—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military board, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

**ART. 27. Courts of Inquiry—Records of, When Admissible.**—The record of the proceedings of a court of inquiry may, with the consent of the accused, be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

**ART. 28. Certain Acts to Constitute Desertion.**—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

[Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein.

[Any person subject to military law who quits his organization or place of duty with the intent to avoid hazardous duty or to shirk important service shall be deemed a deserter.

**ART. 29. Court to Announce Action.**—Whenever the court has acquitted the accused upon all specifications and charges, the court shall at once announce such result in open court. Under such regulations as the President may prescribe the findings and sentence in other cases may be similarly announced.

**ART. 30. Closed Sessions.**—Whenever a general or special court-martial shall sit in closed session, the trial judge advocate and the assistant trial judge advocate, if any, shall withdraw; and when their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel, if there be any.

**ART. 31. Method of Voting.**—Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court. The law member of a general court-martial or the president of a special court-martial, shall rule in open court upon interlocutory questions, other than challenge, arising during the proceedings: *Provided*, That unless such ruling be made by the law member of a general court-martial, if any member object thereto, the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That any such ruling made by the law member of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law member may in any case consult with the court, in closed session, before making a ruling, and may change any ruling made at any time during the trial. It shall be the duty of the law member of a general or the president of a special court-martial before a vote is taken to advise the court that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt and that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in the accused's favor and he shall be acquitted; if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; that the burden of proof to establish the guilt of the accused is upon the Government.

**ART. 32. Contempts.**—A Military tribunal may punish as for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder: *Provided*, That such punishment shall in no case exceed one month's confinement, or a fine of \$100, or both.

**ART. 33. Records—General Courts-Martial.**—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the trial judge advocate; but in case the record can not be authenticated by the president and trial judge advocate by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the president and by an assistant trial judge advocate, if there be one, in lieu of the trial judge advocate; otherwise by another member of the court.

**ART. 34. Records—Special and Summary Courts-Martial.**—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

**ART. 35. Disposition of Records—General Courts-Martial.**—The trial judge advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been acted upon, be transmitted to the Judge Advocate General of the Army.

**ART. 36. Disposition of Records—Special and Summary Courts-Martial.**—After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to the headquarters of the officer exercising general court-martial jurisdiction over the command, there to be filed in the office of the staff judge advocate: *Provided, however,* That each record of trial by special court-martial in which the sentence, as approved by the appointing authority, includes a bad-conduct discharge, shall if approved by the officer exercising general court-martial jurisdiction under the provisions of article 47, be forwarded by him to The Judge Advocate General for review as hereinafter in these articles provided. When no longer of use, records of summary courts-martial may be destroyed as provided by law governing destruction of Government records.

**ART. 37. Irregularities—Effect of.**—The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided,* That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: *Provided further,* That the omission of the words "hard labor" in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments.

**ART. 38. President May Prescribe Rules.**—The President may, by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals, which regulations shall, insofar as he shall deem practicable, apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in the district courts of the United States: *Provided,* That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further,* That all rules and regulations made in pursuance of this Article shall be laid before the Congress.

#### [E. LIMITATIONS UPON PROSECUTIONS

**ART. 39. As to Time.**—Except for desertion or absence without leave committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than 2 years before arraignment of such person: *Provided,* That for desertion in time of peace, rape or for any crime or offense punishable under articles 93 and 94 of this code the period of limitations upon trial and punishment by court-martial shall be three years: *Provided further,* That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not

have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: *Provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law: *And provided further*, That in the case of any offense the trial of which in time of war shall be certified by the Secretary of the Army to be detrimental to the prosecution of the war or inimical to the Nation's security, the period of limitations herein provided for the trial of the said offense shall be extended to the duration of the war and six months thereafter.

**ART. 40.** As to Number.—No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the reviewing and, if there be one, the confirming authority shall have taken final action upon the case.

[No authority shall return a record of trial to any court-martial for reconsideration of—

- [(a) An acquittal; or
- [(b) A finding of not guilty of any specification; or
- [(c) A finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Article of War; or

[(d) The sentence originally imposed, with a view to increasing its severity, unless such sentence is less than the mandatory sentence fixed by law for the offense or offenses upon which a conviction has been had.

[And no court-martial in any proceedings on revision shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is hereinbefore prohibited.

#### F. PUNISHMENTS

**ART. 41.** Cruel and Unusual Punishments Prohibited.—Cruel and unusual punishments of every kind, including flogging, branding, marking, or tattooing on the body are prohibited.

**ART. 42.** Places of Confinement—When Lawful.—Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall, under the sentence of a court-martial, be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature and so punishable by penitentiary confinement for more than one year by some statute of the United States, of general application within the continental United States, excepting section 289, Penal Code of the United States, 1910, or by the law of the District of Columbia, or by way of commutation of a death sentence, and unless, also, the period of confinement authorized and adjudged by such court-martial is more than one year: *Provided*, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions, any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: *Provided further*, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: *Provided further*, That persons sentenced to dishonorable discharge and to confinement, not in a penitentiary, shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of the Army or the reviewing authority may direct, but not in a penitentiary.

**ART. 43.** Death Sentence—When Lawful; Vote on Findings and Sentence.—No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death, except by the concurrence of all the members of said court-martial present at the time the vote is taken, and for an offense in these articles expressly made punishable by death; nor sentenced to life imprisonment, nor to confinement for more than ten years, except by the concurrence of three-fourths of all the members present at the time the vote is taken. Conviction or any offense for which the death sentence is mandatory and any sentence to confinement not in excess of ten years, whether by general or special court-martial, may be determined by a two-thirds vote of those members present at the time the vote is taken. All other questions shall be determined by a majority vote.

**ART. 44.** Officers—Reduction to Ranks.—When a sentence to dismissal may lawfully be adjudged in the case of an officer the sentence may in time of war, under such regulations as the President may prescribe, adjudge in lieu thereof reduction to the grade of private.

**[ART. 45. Maximum Limits.**—Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not exceed such limit or limits as the President may from time to time prescribe: *Provided*, That in time of peace the period of confinement in a penitentiary shall in no case exceed the maximum period prescribed by the law which, under article 42 of these articles, permits confinement in a penitentiary, unless in addition to the offense so punishable under such law the accused shall have been convicted at the same time of one or more other offenses.

**[G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY**

**[ART. 46. Charges; Action Upon.**—

**(a) Signature; oath.**—Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.

**(b) Investigation.**—No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. The accused shall be permitted, upon his request, to be represented at such investigation by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation they shall be accompanied by a statement of the substance of the testimony taken on both sides.

**(c) Forwarding charges; delays; service of charges.**—When a person is held for trial by general court-martial, the commanding officer will, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. In time of peace no person shall, against his objection be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

**[ART. 47. Action by Convening Authority.**—

**(a) Assignment of judge advocates; channels of communication.**—All members of the Judge Advocate General's Corps will be assigned as prescribed by The Judge Advocate General after appropriate consultations with commanders on whose staffs they may serve; and The Judge Advocate General or senior members of his staff will make frequent inspections in the field in supervision of the administration of military justice. Convening authorities will at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is authorized to communicate directly with the staff judge advocate of a superior or subordinate command, or with The Judge Advocate General.

**(b) Reference for trial.**—Before directing the trial of any charge by general court-martial the convening authority will refer it to his staff judge advocate for consideration and advice; and no charge will be referred to a general court-martial for trial unless it has been found that a thorough and impartial investigation thereof has been made as prescribed in the preceding article, that such charge is legally sufficient to allege an offense under these articles, and is sustained by evidence indicated in the report of investigation.

**(c) Action on record of trial.**—Before acting upon a record of trial by general court-martial or military commission, or a record of trial by special court-martial in which a bad-conduct discharge has been adjudged and approved by the authority appointing the court, the reviewing authority will refer it to his staff judge advocate or The Judge Advocate General for review and advice; and no sentence shall be approved unless upon conviction established beyond reasonable doubt of an offense made punishable by these articles, and unless the record of trial has been found legally sufficient to support it.

[(d) Approval.—No sentence of a court-martial shall be carried into execution until the same shall have been approved by the convening authority: *Provided*, That no sentence of a special court-martial including a bad-conduct discharge shall be carried into execution until in addition to the approval of the convening authority the same shall have been approved by an officer authorized to appoint a general court-martial.

[(e) Who may exercise.—Action by the convening authority may be taken by an officer commanding for the time being, by a successor in command, or by any officer exercising general court-martial jurisdiction.

[(f) Powers incident to power to approve.—The power to approve the sentence of a court-martial shall include—

[(1) The power to approve or disapprove a finding of guilty and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense;

[(2) The power to approve or disapprove the whole or any part of the sentence; and

[(3) The power to remand a case for rehearing under the provisions of article 52.

[ART. 48. Confirmation.—In addition to the approval required by article 47, confirmation is required as follows before the sentence of a court-martial may be carried into execution, namely:

[(a) By the President with respect to any sentence—

[(1) Of death, or

[(2) Involving a general officer: *Provided*, That when the President has already acted as approving authority, no additional confirmation by him is necessary;

[(b) By the Secretary of the Army with respect to any sentence not requiring approval or confirmation by the President, when The Judge Advocate General does not concur in the action of the Judicial Council;

[(c) By the Judicial Council, with the concurrence of The Judge Advocate General, with respect to any sentence—

[(1) When the confirming action of the Judicial Council is not unanimous, or when by direction of The Judge Advocate General his participation in the confirming action is required, or

[(2) Involving imprisonment for life, or

[(3) Involving the dismissal of an officer other than a general officer, or

[(4) Involving the dismissal or suspension of a cadet;

[(d) By the Judicial Council with respect to any sentence in a case transmitted to the Judicial Council under the provisions of article 50 for confirming action.

[ART. 49. Powers Incident to Power to Confirm.—The power to confirm the sentence of a court-martial shall be held to include—

[(a) The power to approve, confirm, or disapprove a finding of guilty, and to approve or confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense;

[(b) The power to confirm, disapprove, vacate, commute; or reduce to legal limits the whole or any part of the sentence;

[(c) The power to restore all rights, privileges, and property affected by any finding or sentence disapproved or vacated;

[(d) The power to order the sentence to be carried into execution;

[(e) The power to remand the case for a rehearing under the provisions of article 52.

[ART. 50. Appellate Review—

[(a) Board of review; judicial council.—The Judge Advocate General shall constitute, in his office, a Board of Review composed of not less than three officers of the Judge Advocate General's Corps. He shall also constitute, in his office, a Judicial Council composed of three general officers of the Judge Advocate General's Corps: *Provided*, That The Judge Advocate General may, under exigent circumstances, detail as members of the Judicial Council, for periods not in excess of sixty days, officers of the Judge Advocate General's Corps of grades below that of general officer.

[(b) Additional boards of review and judicial councils.—Whenever necessary, The Judge Advocate General may constitute two or more Boards of Review and Judicial Councils in his office, with equal powers and duties, composed as provide in the first paragraph of this article.

[(c) Branch offices.—Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General who shall be a general officer of the Judge Advocate General's Corps, with any distant command, and to establish in such

branch office one or more Boards of Review and Judicial Councils composed as provided in the first paragraph of this article. Such Assistant Judge Advocate General and such Board of Review and Judicial Council shall be empowered to perform for that command under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and the Board of Review and Judicial Council in his office would otherwise be required to perform in respect to all cases involving sentences not requiring approval or confirmation by the President: *Provided*, That the power of mitigation and remission shall not be exercised by such Assistant Judge Advocate General or by agencies in his office, but any case in which such action is deemed desirable shall be forwarded to The Judge Advocate General with appropriate recommendations.

[(d) Action by board of review when approval by President or confirming action is required: Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President or confirmation by any other confirming authority is submitted to the President or such other confirming authority, as the case may be, it shall be examined by the Board of Review which shall take action as follows:

[(1) In any case requiring action by the President, the Board of Review shall submit its opinion in writing, through the Judicial Council which shall also submit its opinion in writing, to The Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the Board's and Council's opinions, with his recommendations, directly to the Secretary of the Army for the action of the President: *Provided*, That the Judicial Council, with the concurrence of The Judge Advocate General shall have powers in respect to holdings of legal insufficiency equal to the powers vested in the Board of Review by subparagraph (3) of this paragraph.

[(2) In any case requiring confirming action by the Judicial Council with or without the concurrence of The Judge Advocate General, when the Board of Review is of the opinion that the record of trial is legally sufficient, to support the sentence it shall submit its opinion in writing to the Judicial Council for appropriate action.

[(3) When the Board of Review is of the opinion that the record of trial in any case requiring confirming action by the President or confirming action by the Judicial Council is legally insufficient to support the findings of guilty and sentence, or the sentence, or that errors of law have been committed injuriously affecting the substantial rights of the accused, it shall submit its holdings to The Judge Advocate General and when The Judge Advocate General concurs in such holding, such findings and sentence shall thereby be vacated in accord with such holding and the record shall be transmitted by The Judge Advocate General to the appropriate convening authority for a rehearing or such other action as may be proper.

[(4) In any case requiring confirming action by the President, or confirming action by the Judicial Council in which the Board of Review holds the record of trial legally insufficient to support the findings of guilty and sentence, or the sentence, and The Judge Advocate General shall not concur in the holding of the Board of Review, the holding and the record of trial shall be transmitted to the Judicial Council for confirming action or for other appropriate action in a case in which confirmation of the sentence by the President is required under article 48a.

[(e) Action by board of review in cases involving dishonorable or bad-conduct discharges or confinement in penitentiary.—No authority shall order the execution of any sentence of a court-martial involving dishonorable discharge not suspended, bad-conduct discharge not suspended, or confinement in a penitentiary unless and until the appellate review required by this article shall have been completed and unless and until any confirming action required shall have been completed. Every record of trial by general or special court-martial involving a sentence to dishonorable discharge or bad-conduct discharge, whether such discharges be suspended or not suspended, and every record of trial by general court-martial involving a sentence to confinement in a penitentiary, other than records of trial examination of which is required by paragraph *d* of this article, shall be examined by the Board of Review which shall take action as follows:

[(1) In any case in which the Board of Review holds the record of trial legally sufficient to support the findings of guilty and sentence, and confirming action is not by the Judge Advocate General or the Board of Review deemed necessary, the Judge Advocate General shall transmit the holding

to the convening authority, and such holding shall be deemed final and conclusive.

[(2) In any case in which the Board of Review holds the record of trial legally sufficient to support the findings of guilty and sentence, but modification of the findings of guilty or the sentence is by the Judge Advocate General or the Board of Review deemed necessary to the ends of justice, the holding and the record of trial shall be transmitted to the Judicial Council for confirming action.

[(3) In any case in which the Board of Review holds the record of trial legally insufficient to support the findings of guilty and sentence, in whole or in part, and the Judge Advocate General concurs in such holding, the findings and sentence shall thereby be vacated in whole or in part in accord with such holding, and the record shall be transmitted by the Judge Advocate General to the convening authority for rehearing or such other action as may be appropriate.

[(4) In any case in which the Board of Review holds the record of trial legally insufficient to support the findings of guilty and sentence, in whole or in part, and the Judge Advocate General shall not concur in the holding of the Board of Review, the holding and the record of trial shall be transmitted to the Judicial Council for confirming action.

[(f) Appellate action in other cases.—Every record of trial by general court-martial the appellate review of which is not otherwise provided for by this article shall be examined in the Office of the Judge Advocate General and if found legally insufficient to support the findings of guilty and sentence, in whole or in part, shall be transmitted to the Board of Review for appropriate action in accord with paragraph e of this article.

[(g) Weighing evidence.—In the appellate review or records of trials by courts-martial as provided in these articles the Judge Advocate General and all appellate agencies in his office shall have authority to weigh evidence, judge the credibility of witnesses, and determine controverted questions of fact.

[(h) Finality of court-martial judgments.—The appellate review of records of trial provided by this article, the confirming action taken pursuant to articles 48 or 49, the proceedings, findings, and sentences of courts-martial as heretofore or hereafter approved, reviewed, or confirmed as required by the Articles of War and all dismissals and discharges heretofore or hereafter carried into execution pursuant to sentences by courts-martial following approval, review, or confirmation as required by the Articles of War, shall be final and conclusive, and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon application for a new trial as provided in article 53.

[ART. 51. Mitigation, Remission, and Suspension of Sentences.—

[(a) At the time ordered executed.—The power of the President, the Secretary of the Army, and any reviewing authority to order the execution of a sentence of a court-martial shall include the power to mitigate, remit, or suspend the whole or any part thereof, except that a death sentence may not be suspended. The Judge Advocate General shall have the power to mitigate, remit, or suspend the whole or any part of a sentence in any case requiring appellate review under article 50 and not requiring approval or confirmation by the President, but the power to mitigate or remit shall be exercised by the Judge Advocate General under the direction of the Secretary of the Army. The authority which suspends the execution of a sentence may restore the person under sentence to duty during such suspension; and the death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.

[(b) Subsequent to the time ordered executed:

[(1) Any unexecuted portion of a sentence other than a sentence of death, including all uncollected forfeitures, adjudged by court-martial may be mitigated, remitted or suspended and any order of suspension may be vacated, in whole or in part, by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States disciplinary barracks, in which the person under sentence may be, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority or by the Judge Advocate General under the direction of the Secretary of the Army; *Provided*, That no sentence approved or confirmed by the President shall be mitigated, remitted, or suspended by any

authority inferior to the President: *And provided further*, That no order of suspension of a sentence to dishonorable discharge or bad-conduct discharge shall be vacated unless and until confirming or appellate action on the sentence has been completed as required by articles 48 and 50.

[(2) The power to suspend a sentence shall include the power restore the person affected to duty during such suspension.

[(3) The power to mitigate, remit or suspend the sentence or any part thereof in the case of a person confined in the United States disciplinary barracks or in a penitentiary shall be exercised by the Secretary of the Army or by the Judge Advocate General under the direction of the Secretary of the Army.

[ART. 52. Rehearings.—When any reviewing or confirming authority disapproved a sentence or when any sentence is vacated by action of the Board of Review or Judicial Council and the Judge Advocate General, the reviewing or confirming authority or the Judge Advocate General may authorize or direct a rehearing. Such rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding.

[ART. 53. Petition for New Trial.—Under such regulations as the President may prescribe, the Judge Advocate General is authorized upon application of an accused person, and upon good cause shown, in his discretion to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad-conduct discharge previously executed a form of discharge authorized for administrative issuance, in any court-martial case in which application is made within one year after final disposition of the case upon initial appellate review: *Provided*, That with regard to cases involving offenses committed during World War II, the application for a new trial may be made within one year after termination of the war, or after its final disposition upon initial appellate review as herein provided whichever is the later: *Provided*, That only one such application for a new trial may be entertained with regard to any one case: *And provided further*, That all action by the Judge Advocate General pursuant to this article, and all proceedings, findings, and sentences on new trials under this article, as approved, reviewed, or confirmed under articles 47, 48, 49, and 50, and all dismissals and discharges carried into execution pursuant to sentences adjudged on new trials and approved, reviewed, or confirmed, shall be final and conclusive and orders publishing the action of the Judge Advocate General or the proceedings on new trial and all action taken pursuant to such proceedings, shall be binding upon all departments, courts, agencies, and officers of the United States.

### III. PUNITIVE ARTICLES

#### A. ENLISTMENT; MUSTER; RETURNS

[ART. 54. Fraudulent Enlistment.—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct.

[ART. 55. Officer Making Unlawful Enlistment.—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

[ART. 56. False Muster.—Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

[ART. 57. False Returns.—Omission to Render Returns.—Every officer whose duty it is to render to the Department of the Army or other superior authority a return of the state of the troops under his command, or of the arms, ammunition,

clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

#### **[B. DESERTION; ABSENCE WITHOUT LEAVE**

**[ART. 58. Desertion.**—Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

**[ART. 59. Advising or Aiding Another to Desert.**—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

**[ART. 60. Entertaining a Deserter.**—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct.

**[ART. 61. Absence Without Leave.**—Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct.

#### **[C. DISRESPECT; INSUBORDINATION; MUTINY**

**[ART. 62. Disrespect Toward the President, Vice President, Congress, Secretary of the Army, Governors, Legislatures.**—Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of the Army or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct.

**[ART. 63. Disrespect Toward Superior Officer.**—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct.

**[ART. 64. Assaulting or Willfully Disobeying Superior Officer.**—Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.

**[ART. 65. Insubordinate Conduct Toward Noncommissioned Officer.**—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a warrant officer or a noncommissioned officer while in the execution of his office, or uses threatening or insulting language or behaves in an insubordinate or disrespectful manner toward a warrant officer or a noncommissioned officer while in the execution of his office, shall be punished as a court-martial may direct.

**[ART. 66. Mutiny or Sedition.**—Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

**[ART. 67. Failure to Suppress Mutiny or Sedition.**—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or, knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other punishment as a court-martial may direct.

**[ART. 68. Quarrels; Frays; Disorders.**—All officers, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks, Quartermaster Corps, and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers

who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer, nurse, band leader, warrant officer, field clerk, or noncommissioned officer, or draws a weapon upon or otherwise threatens or does violence to him, shall be punished as a court-martial may direct.

#### [D. ARREST; CONFINEMENT

**ART. 69. Arrest or Confinement.**—Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

**ART. 70. Charges; Action Upon, Unnecessary Delay.**—When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay in investigating or carrying the case to a final conclusion shall be punished as a court-martial may direct.

**ART. 71. Refusal to Receive and Keep Prisoners.**—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct.

**ART. 72. Report of Prisoners Received.**—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

**ART. 73. Releasing Prisoner Without Proper Authority.**—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

**ART. 74. Delivery of Offenders to Civil Authorities.**—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities or to aid officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

#### [E. WAR OFFENSES

**ART. 75. Misbehavior Before the Enemy.**—Any officer or soldier who, before the enemy, misbehaves himself, runs away, or shamefully abandons or delivers up or by any misconduct, disobedience, or neglect endangers the safety of any fort,

post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters, shall suffer death or such other punishment as a court-martial may direct.

**ART. 76. Subordinates Compelling Commander to Surrender.**—Any person subject to military law who compels or attempts to compel any commander of any garrison, fort, post, camp, guard, or other command, to give it up to the enemy or to abandon it shall be punishable with death or such other punishment as a court-martial may direct.

**ART. 77. Improper Use of Countersign.**—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct.

**ART. 78. Forcing a Safeguard.**—Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

**ART. 79. Captured Property to be Secured for Public Service.**—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct.

**ART. 80. Dealing in Captured or Abandoned Property.**—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties.

**ART. 81. Relieving, Corresponding With, or Aiding the Enemy.**—Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such other punishment as a court-martial or military commission may direct.

**ART. 82. Spies.**—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death.

#### F. MISCELLANEOUS CRIMES AND OFFENSES

**ART. 83. Military Property—Willful or Negligent Loss, Damage or Wrongful Disposition.**—Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct.

**ART. 84. Waste or Unlawful Disposition of Military Property Issued to Soldiers.**—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct.

**ART. 85. Drunk on Duty.**—Any person subject to military law, who is found drunk on duty, shall be punished as a court-martial may direct.

**ART. 86. Misbehavior of Sentinel.**—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct.

**ART. 87. Personal Interest in Sale of Provisions.**—Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessaries of life brought into such garrison, fort, barracks, camp, or other place for the use of

troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

**ART. 88. Unlawfully Influencing Action of Court.**—No authority appointing a general, special, or summary court-martial nor any other commanding officer, shall censure, reprimand, or admonish such court, or any member thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, by such court or any member thereof, of its or his judicial responsibility. No person subject to military law shall attempt to coerce or unlawfully influence the action of a court-martial or any military court or commission, or any member thereof, in reaching the findings or sentence in any case, or the action of an appointing or reviewing or confirming authority with respect to his judicial acts.

**ART. 89. Good Order to be Maintained and Wrongs Redressed.**—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or wrongfully destroys any property whatsoever or commits any kind of depredation or riot, shall be punished as a court-martial may direct. Any commanding officer, who, upon complaint made to him refused or omits to see reparation made to the party injured, insofar as the offender's pay shall go toward such reparation, as provided for in article 105, shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

**ART. 90. Provoking Speeches or Gestures.**—No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct.

**ART. 91. Dueling.**—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.

**ART. 92. Murder—Rape.**—Any person subject to military law found guilty of murder shall suffer death or imprisonment for life, as a court-martial may direct; but if found guilty of murder not premeditated, he shall be punished as a court-martial may direct. Any person subject to military law who is found guilty of rape shall suffer death or such other punishment as a court-martial may direct: *Provided*, That no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.

**ART. 93. Various Crimes.**—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court-martial may direct: *Provided*, That any person subject to military law who commits larceny or embezzlement shall be guilty of larceny within the meaning of this article.

**ART. 94. Frauds Against the Government.**—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain the allowance or payment of any false or fraudulent claim; or

Who for the purpose of obtaining, or aiding others to obtain the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counter-

feiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

【Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

【Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

【Who, steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof: *Provided*, That any person, subject to military law, who commits larceny or embezzlement with respect to property of the United States, furnished or intended for the military service thereof, or with respect to other property within the purview of this article, steals said property within the meaning of this article; or

【Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same; or

【Who enters into any agreement or conspires to commit any of the offenses aforesaid;

【Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. If any person, being guilty of any of the offenses aforesaid or who steals or fails properly to account for any money or other property held in trust by him for enlisted persons or as its official custodian while in the military service of the United States, receives his discharge or is dismissed or otherwise separated from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so separated therefrom.

【ART. 95. Conduct Unbecoming an Officer and Gentleman.—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

【ART. 96. General Article.—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

#### 【IV. COURTS OF INQUIRY

【ART. 97. When and by Whom Ordered.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.

【ART. 98. Composition.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

【ART. 99. Challenges.—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available.

【ART. 100. Oath of Members and Recorders.—The recorder of a court of inquiry shall administer to the members the following oath: "You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to

the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

[In case of affirmation the closing sentence of adjuration will be omitted.

**ART. 101. Powers; Procedure.**—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the trial judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

**ART. 102. Opinion on Merits of Case.**—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

**ART. 103. Record of Proceedings—How Authenticated.**—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

#### 【V. MISCELLANEOUS PROVISIONS

**ART. 104. Disciplinary Powers of Commanding Officers.**—Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command, may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

[The disciplinary punishments authorized by this article may include admonition or reprimand, or the withholding of privileges, or extra fatigue, or restriction to certain specified limits, or hard labor without confinement or any combination of such punishments for not exceeding one week from the date imposed; but shall not include forfeiture of pay or confinement under guard; except that any officer exercising general court-martial jurisdiction may, under the provisions of this article, also impose upon a warrant officer or officer of his command below the rank of brigadier general a forfeiture of not more than one-half of his pay per month for three months.

[A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

**ART. 105. Injuries to Property—Redress of.**—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

【Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board.

【ART. 106. Arrest of Deserters by Civil Officials.—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

【ART. 107.】 Soldiers to Make Good Time Lost.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States, or without proper authority absents himself from his organization, station or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

【ART. 108.】 Soldiers—Separation From the Service.—No enlisted person, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, and no enlisted person shall be discharged from said service before his term of service has expired, except in the manner prescribed by the Secretary of the Army, or by sentence of a general or special court-martial.

【ART. 109. Oath of Enlistment.—At the time of his enlistment every soldier shall take the following oath or affirmation: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and Articles of War." This oath or affirmation may be taken before any officer.

【ART. 110. Certain Articles of War to be Read or Explained.—Articles 1, 2, 24, 28, 29, 54 to 97, inclusive, 104 to 109, inclusive, and 121 shall be read or carefully explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read or explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States. And a complete text of the Articles of War and the Manual for Courts-Martial shall be made available to any soldier, upon his request, for his personal examination.

【ART. 111. Copy of Record of Trial.—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial.

【ART. 112.】 Effects of Deceased Persons—Disposition of.—In case of the death of any person subject to military law the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters; and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects, and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors and to pay the undisputed local creditors of decedent in so far as any money belonging to the deceased which may come into said summary court's possession under this article will permit, taking receipts therefor for file with said court's final report upon its transactions to the Department of the Army; and as soon as practicable after the collection of such effects said summary court shall transmit such effects and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to the son, daughter, father, provided the father has not abandoned the support of his family, mother, brother, sister, or the next of kin in the order named, if such be found by said court, or the beneficiary named in the will of the deceased, if such be found by said court, and said court shall thereupon make to the Department of the Army a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to or readily ascertainable by said court, and the said court shall so find, said summary court shall

have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of deceased except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased; any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions, to the Department of the Army for transmission to the Auditor for the Department of the Army for action as authorized by law in the settlement of accounts of deceased officers and enlisted men of the Army.

The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment.

**[ART. 113.] Inquests.**—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

**[ART. 114. Authority to Administer Oaths.**—Any officer of any component of the Army of the United States on active duty in Federal service commissioned in or assigned or detailed to duty with the Judge Advocate General's Corps, any staff judge advocate or acting staff judge advocate, the President of a general or special court-martial, any summary court-martial, the trial judge advocate or any assistant trial judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant, assistant adjutant or personnel adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and shall also have the general powers of a notary public in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents and all other forms of notarial acts to be executed by persons subject to military law: *Provided*, That no fee of any character shall be paid to any officer mentioned in this Act for the performance of any notarial act herein authorized.

**[ART. 115. Appointment of Reporters and Interpreters.**—Under such regulations as the Secretary of the Army may from time to time prescribe, the president of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission.

**[ART. 116. Powers of Assistant Trial Judge Advocate and of Assistant Defense Counsel.**—An assistant trial judge advocate of a general or special court-martial shall be competent to perform many duty devolved by law, regulation, or the custom of the service upon the trial judge advocate of the court. An assistant defense counsel shall be competent likewise to perform any duty devolved by law, regulation, or the custom of the service upon counsel for the accused.

**[ART. 117. Removal of Civil Suits.**—When any civil or criminal prosecution is commenced in any court of a State of the United States against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.

**[ART. 118. Officers, Separation From Service.**—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of

a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction.

**[ART. 119.] Rank and Precedence Among Regulars, Militia, and Volunteers.**—That when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of such field, department, or command, or of an organization thereof, without regard to seniority in rank in the same grade.

**[ART. 120.] Command When Different Corps or Commands Happen to Join.**—When different corps or commands of the military forces of the United States happen to join or do duty together, the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President.

**[ART. 121. Complaints of Wrongs.**—Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of: and he shall, as soon as possible, transmit to the Department of the Army a true statement of such complaint, with the proceedings had thereon.]

### Act of June 4, 1920 (41 Stat. 787), as amended:

#### CHAPTER II

**[SEC. 2.** That the provisions of Chapter II of this Act shall take effect and be in force eight months after the approval of this Act: *Provided*, That articles 2, 23, and 45 shall take effect immediately.

**[SEC. 3.** That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of Chapter II of this Act, under any law embraced in or modified, changed, or repealed by Chapter II of this Act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this Act had not been passed.

**[SEC. 4.** That section 1342 of the Revised Statutes of the United States be, and the same is hereby, repealed, and all laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed.]

#### CROSS-REFERENCE TABLE

##### ARTICLES OF WAR TO RELATED ARTICLES IN THE UNIFORM CODE OF MILITARY JUSTICE

AW	UCMJ	AW	UCMJ
Art. 1.....	1.	Art. 19.....	42.
2 (a).....	2 (1).	20.....	40.
2 (b).....	2 (2).	21.....	45.
2 (c).....	2 (1), 17.	22.....	46.
2 (d).....	2 (10), 2 (11).	23.....	47.
2 (e).....	2 (7).	24.....	31.
2 (f).....	2 (4), 2 (5).	25.....	49.
3.....	16.	26.....	49.
4.....	25.	27.....	50.
5.....	16.	28.....	85.
6.....	16.	29.....	53.
7.....	16.	30.....	39.
8.....	22, 26.	31.....	51.
9.....	23.	32.....	48.
10.....	24.	33.....	54 (a).
11.....	27, 35 (b), 6 (c).	34.....	54 (b).
12.....	18.	35.....	60, 61, 65 (a).
13.....	19.	36.....	65.
14.....	20.	37.....	59 (a).
15.....	21.	37.....	64, 53 (b).
16.....	25 (c), 25 (d), 12, 13.	38.....	36.
17.....	38.	39.....	43.
18.....	41.	40.....	44, 62.

## CROSS-REFERENCE TABLE—Continued

## ARTICLES OF WAR TO RELATED ARTICLES IN THE UNIFORM CODE OF MILITARY JUSTICE—continued

AW	UCMJ	AW	UCMJ
Art. 41	55.	Art. 71	11.
42	58 (a).	72	11.
43	52.	73	96.
44	71 (b).	74	14.
45	56, 58 (a).	75	99.
46a	30.	76	100.
46b	32.	77	101.
46c	33, 35.	78	102.
47a	6.	79	103.
47b	34.	80	103.
47c	61, 65 (b).	81	104.
47d	71.	82	106.
47e	60.	83	108.
47f	64.	84	108.
48	71.	85	112.
49	71.	86	113.
50a	66, 67.	87	Deleted.
50b	66, 68.	88	37.
50c	68.	89	109, 116, 139.
50d	66, 67, 71.	90	117.
50e	66, 67, 71.	91	114.
50f	69.	92	118, 120.
50g	66.	93	119, 121-131.
50h	76.	94	132.
51a	71, 74.	95	133.
51b	71, 72, 74.	96	134.
52	63, 66 (d), 67 (e).	97-103	135.
53	73, 75.	104	15.
54	83.	105	139.
55	84.	106	8.
56	107.	107	(1).
57	107.	108	(1).
58	85.	109	(2).
59	77.	110	137.
60	78.	111	54 (c).
61	86, 87.	112	(1).
62	88.	113	(1).
63	89.	114	136.
64	90.	115	28.
65	91.	116	38.
66	94.	117	(2).
67	94.	118	(2).
68	7, 95.	119	(1).
69	10, 95.	120	(1).
70	10, 98 (1).	121	138.

<sup>1</sup> Text of article not repealed. See sec. 6 of bill.

<sup>2</sup> Uniform provision for all services enacted. See secs. 8, 9, and 10 of bill.

**The Articles for the Government of the Navy (R. S., sec. 1624, as amended; sec. 2, act of June 22, 1874 (18 Stat. 192); act of March 3, 1893 (27 Stat. 716); act of January 25, 1895 (28 Stat. 639) as amended; secs. 1-12, 16-17, act of February 16, 1909 (35 Stat. 623); act of August 29, 1916 (39 Stat. 586); act of October 6, 1917 (40 Stat. 393) as amended; act of April 2, 1918 (40 Stat. 501)). (See 34 U. S. C. A. 1200, arts. 1-69):**

【The Navy of the United States shall be governed by the following articles:

【ARTICLE 1

【The commanders of all fleets, squadrons, naval stations, and vessels belonging to the Navy are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices; and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and any such commander who offends against this article shall be punished as a court-martial may direct.

## 【ARTICLE 2

【The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

## 【ARTICLE 3

【Any irreverent or unbecoming behavior during divine service shall be punished as a general or summary court-martial may direct.

## 【ARTICLE 4

【The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

【1. Who makes, or attempts to make, or unites with any mutiny or mutinous assembly, or, being witness or to present at any mutiny, does not do his utmost to suppress it; or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

【2. Or disobeys the lawful orders of his superior officers;

【3. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

【4. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

【5. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

【6. Or, in time of war, deserts or entices others to desert;

【7. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

【8. Or sleeps upon his watch;

【9. Or leaves his station before being regularly relieved;

【10. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

【11. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

【12. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

【13. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

【14. Or, in time of battle, deserts his duty or station, or entices others to do so;

【15. Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

【16. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

【17. Or does not, upon signal for battle, use his utmost exertions to join in battle;

【18. Or fails to encourage in his own person, his inferior officers and men to fight courageously;

【19. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

【20. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

## 【ARTICLE 5

【All persons who, in time of war or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court-martial may adjudge.

## 【ARTICLE 6

【If any person subject to the Articles for the Government of the Navy commits the crime of murder without the territorial jurisdiction of any particular State, or the District of Columbia, he may be tried by court martial and punished with death.

## 【ARTICLE 7

【A naval court-martial may adjudge the punishment of imprisonment for life, or for a stated term, at hard labor, in any case where it is authorized to adjudge the punishment of death; and such sentences of imprisonment and hard labor may be carried into execution in any prison or penitentiary under the control of the United States, or which the United States may be allowed by the legislature of any State to use; and persons so imprisoned in the prison or penitentiary of any State or Territory shall be subject in all respects to the same discipline and treatment as convicts sentenced by the courts of the State or Territory in which the same may be situated.

## 【ARTICLE 8

【Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy—

- 【1. Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;
- 【2. Or is guilty of cruelty toward or oppression or maltreatment of any person subject to his orders;
- 【3. Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward any person in the Navy;
- 【4. Or endeavors to foment quarrels between other persons in the Navy;
- 【5. Or sends or accepts a challenge to fight a duel or acts as a second in a duel;
- 【6. Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while in the execution of his office;
- 【7. Or joins in or abets any combination to weaken the lawful authority of or lessen the respect due to his commanding officer;
- 【8. Or utters any seditious or mutinous words;
- 【9. Or is negligent or careless in obeying orders or culpably inefficient in the performance of duty;
- 【10. Or does not use his best exertions to prevent the unlawful destruction of public property by others;
- 【11. Or, through inattention or negligence, suffers any vessel of the Navy to be stranded, or run upon a rock or shoal, or hazarded;
- 【12. Or, when attached to any vessel appointed as convoy to any merchant or other vessels, fails diligently to perform his duty, or demands or exacts any compensation for his services, or maltreats the officers or crews of such merchant or other vessels;
- 【13. Or takes, receives, or permits to be received, on board the vessel to which he is attached any goods or merchandise for freight, sale, or traffic, except gold, silver, or jewels for freight or safe-keeping; or demands or receives any compensation for the receipt or transportation of any other article than gold, silver, or jewels without authority from the President or Secretary of the Navy;
- 【14. Or knowingly makes or signs, or aids, abets, directs, or procures the making or signing of, any false muster;
- 【15. Or wastes any ammunition, provisions, or other public property, or, having power to prevent it, knowingly permits such waste;
- 【16. Or, when on shore, plunders, abuses, or maltreats any inhabitant or injures his property in any way;
- 【17. Or refuses or fails to use his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;
- 【18. Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;

**[19.** Or is absent from his station or duty without leave or after his leave has expired;

**[20.** Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

**[21.** Or, in time of peace, deserts or attempts to desert, or aids and entices others to desert;

**[22.** Or receives or entertains any deserter from any other vessel of the Navy, knowing him to be such, and does not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander in chief, or to the commander of the squadron.

#### 【ARTICLE 9

**[Any officer who absents himself from his command without leave may, by the sentence of a court-marshal, be reduced to the rating of seaman, second class.**

#### 【ARTICLE 10

**[Any commissioned officer of the Navy or Marine Corps who, having tendered his resignation, quits his post or proper duties without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of such resignation, shall be deemed and punished as a deserter.**

#### 【ARTICLE 11

**[No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy or at navy yards or naval stations for his own account or benefit.**

#### 【ARTICLE 12

**[No person connected with the Navy shall, under any pretense, import in a public vessel any article which is liable to the payment of duty.**

#### 【ARTICLE 13

**[Distilled spirits shall be admitted on board of vessels of war only upon the order and under the control of the medical officers of such vessels and to be used only for medical purposes.**

#### 【ARTICLE 14

**[Fine and imprisonment, or such other punishment as a court-martial may adjudge, shall be inflicted upon any person in the naval service of the United States—**

**[1.** Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof knowing such claim to be false or fraudulent; or

**[2.** Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

**[3.** Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

**[4.** Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

**[5.** Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

**[6.** Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the naval service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

**[7.** Who, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, furnished or intended for the naval service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

**[8.** Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully and knowingly sells or disposes of any ordnance, arms equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military or naval service thereof; or

**[9.** Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any other person who is a part of or employed in said service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such other person not having lawful right to sell or pledge the same; or

**[10.** Who executes, attempts, or countenances any other fraud against the United States.

**[And if any person, being guilty of any of the offenses described in this article while in the naval service, receives his discharge or is dismissed from the service he shall continue to be liable to be arrested and held for trial and sentence by court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.**

#### **[ARTICLE 15]\***

#### **[ARTICLE 16**

**[No person in the Navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment unless it be for the better preservation thereof or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States before the same are adjudged lawful prize by a competent court: but the whole, without fraud, concealment, or embezzlement, shall be brought in in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court-martial may direct.**

#### **[ARTICLE 17**

**[If any person in the Navy strips off the clothes of or pillages or in any manner maltreats any person taken on board a prize, he shall suffer such punishment as a court-martial may adjudge.**

#### **[ARTICLE 18**

**[If any officer or person in the naval service employs any of the forces under his command for the purpose of returning any fugitive from service or labor, he shall be dismissed from the service.**

#### **[ARTICLE 19**

**[Any officer who knowingly enlists into the naval service any person who has deserted in time of war from the naval or military service of the United States or any insane or intoxicated person or any minor between the ages of 14 and 18 years without the consent of his parents or guardian or any minor under the age of 14 years shall be punished as a court-martial may direct.**

#### **[ARTICLE 20**

**[Every commanding officer of a vessel in the Navy shall obey the following rules:**

**[1.** Whenever a man enters on board the commanding officer shall cause an accurate entry to be made in the ship's books, showing his name, the date, place and term of his enlistment, the place or vessel from which he was received on board, his rating, his descriptive list, his age, place of birth, and citizenship, with such remarks as may be necessary.

**[2.** He shall, before sailing, transmit to the Secretary of the Navy a complete list of the rated men under his command, showing the particulars set forth in rule one, and a list of officers and passengers, showing the date of their entering. And he shall cause similar lists to be made out on the first day of every third month and transmitted to the Secretary of the Navy as opportunities occur, accounting therein for any casualty which may have happened since the last list.

\*Text of this article repealed by act of March 3, 1899 (c. 413, sec. 13, 30 Stat. 1007).

【3. He shall cause to be accurately minuted on the ship's books the names of any persons dying or deserting and the time at which such death or desertion occurs.

【4. In case of the death of any officer, man, or passenger on said vessel he shall take care that the paymaster secures all the property of the deceased for the benefit of his legal representatives.

【5. He shall not receive on board any man transferred from any other vessel or station to him unless such man is furnished with an account, signed by the captain and paymaster of the vessel or station from which he came, specifying the date of his entry on said vessel or at said station, the period and term of his service, the sums paid him, the balance due him, the quality in which he was rated, and his descriptive list.

【6. He shall, whenever officers or men are sent from his ship for whatever cause, take care that each man is furnished with a complete statement of his account, specifying the date of his enlistment, the period and term of his service, and his descriptive list. Said account shall be signed by the commanding officer and paymaster.

【7. He shall cause frequent inspections to be made into the condition of the provisions on his ship and use every precaution for their preservation.

【8. He shall frequently consult with the surgeon in regard to the sanitary condition of his crew and shall use all proper means to preserve their health. And he shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their hammocks and bedding, when the surgeon so advises, and shall direct that some of the crew attend them and keep the place clean.

【9. He shall attend in person, or appoint a proper officer to attend, when his crew is finally paid off, to see that justice is done to the men and to the United States in the settlement of the accounts.

【10. He shall cause the Articles for the Government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company.

【Every commanding officer who offends against the provisions of this article shall be punished as a court-martial may direct.

#### 【ARTICLE 21

【When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court-martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court-martial may direct.

#### 【ARTICLE 22

【(a) All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court-martial may direct.

【(b) Fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared an offense against naval discipline and made punishable by general court-martial, under this article.

#### 【ARTICLE 23

【All offenses committed by persons belonging to the Navy while on shore shall be punished in the same manner as if they had been committed at sea.

#### 【ARTICLE 24

【No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than 10 days, unless a further period is necessary to bring the offender to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

【1. Reduction of any rating established by himself.

【2. Confinement, not exceeding 10 days, unless further confinement be necessary in the case of a prisoner to be tried by court-martial.

3. Solitary confinement, on bread and water, not exceeding five days.

4. Solitary confinement not exceeding seven days.

5. Deprivation of liberty on shore.

6. Extra duties.

7. No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a court-martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

#### ARTICLE 25

(a) All officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel.

(b) No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement.

#### ARTICLE 26

Summary courts-martial may be ordered upon petty officers and enlisted men in the naval service under his command by the commanding officer of any vessel, the commandant of any navy yard or naval station, the commanding officer of any brigade, regiment, or separate or detached battalion, or other separate or detached command, or marine barracks, and, when empowered by the Secretary of the Navy, by the commanding officer or officer in charge of any command not specifically mentioned in the foregoing, for the trial of offenses which such commanding officer or commandant may deem deserving of greater punishment than he is authorized to inflict, but not sufficient to require trial by a general court-martial.

#### ARTICLE 27

A summary court-martial shall consist of three officers not below the rank of ensign as members, and of a recorder. The commander of a ship may order any officer under his command to act as such recorder.

#### ARTICLE 28

Before proceeding to trial the members of a summary court-martial shall take the following oath or affirmation, which shall be administered by the recorder: "I, A B, do swear (or affirm) that I will well and truly try, without prejudice or partiality, the case now depending, according to the evidence which shall be adduced, the laws for the government of the Navy, and my own conscience." After which the recorder of the court shall take the following oath or affirmation, which shall be administered by the senior member of the court: "I, A B, do swear (or affirm) that I will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

#### ARTICLE 29

Except as provided in articles 60 and 68, all testimony before a summary court-martial shall be given orally, upon oath or affirmation, administered by the senior member of the court.

#### ARTICLE 30

Summary courts-martial may sentence petty officers and persons of inferior ratings to either a part or the whole, as may be appropriate, of any one of the following punishments, namely:

1. Discharge from the service with bad-conduct discharge; but the sentence shall not be carried into effect in a foreign country.

2. Solitary confinement, not exceeding 30 days, on bread and water or on diminished rations.

3. Solitary confinement, not exceeding 30 days.

4. Confinement not exceeding two months.

5. Reduction to next inferior rating.

6. Deprivation of liberty on shore on foreign station.

7. Extra police duties and loss of pay, not to exceed three months, may be added to any of the above-mentioned punishments.

## 【ARTICLE 31

【A summary court-martial may disrate any rated person for incompetency.

## 【ARTICLE 32

【No sentence of a summary court-martial shall be carried into execution until the proceedings and sentence have been approved by the officer ordering the court, or his successor in office, and by his immediate superior in command: *Provided*, That if the officer ordering the court, or his successor in office, be the senior officer present, such sentence may be carried into execution upon his approval thereof, subject to the provisions of article 54 (b).

## 【ARTICLE 33

【The officer ordering a summary court-martial shall have power to remit, in part or altogether, but not to commute, the sentence of the court. And it shall be his duty either to remit any part or the whole of any sentence, the execution of which would, in the opinion of the surgeon or senior medical officer on board, given in writing, produce serious injury to the health of the person sentenced; or to submit the case again, without delay, to the same or to another summary court-martial, which shall have power, upon the testimony already taken, to remit the former punishment and to assign some other of the authorized punishments in the place thereof.

## 【ARTICLE 34

【The proceedings of summary courts shall be conducted with as much conciseness and precision as may be consistent with the ends of justice and under such forms and rules as may be prescribed by the Secretary of the Navy, with the approval of the President, and all such proceedings shall be transmitted in the usual mode to the Navy Department, where they shall be kept on file for a period of two years from date of trial, after which time they may be destroyed in the discretion of the Secretary of the Navy.

## 【ARTICLE 35

【Any punishment which a summary court-martial is authorized to inflict may be inflicted by a general court-martial.

## 【ARTICLE 36

【No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof: *Provided*, That the President is authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a State or Federal penitentiary: *Provided further*, That no officer so dropped shall be eligible for reappointment.

## 【ARTICLE 37

【When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial to try such officer on the charges on which he shall have been dismissed. And if such court-martial shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void: *Provided*, That the accounting officers are prohibited from making any allowance to any officer of the Navy who has been, or may hereafter be, dismissed from the service and restored to the same under the provisions of this article, to exceed more than pay as on leave for six months from the date of dismissal, unless it shall appear that the officer demanded in writing, addressed to the Secretary of the Navy, and continued to demand as often as once in six months, a trial as provided for in this article.

## 【ARTICLE 38

【General courts-martial may be convened:

【(1) By the President, the Secretary of the Navy, the commander in chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States; and

【(2) When empowered by the Secretary of the Navy, by the commanding officer of a squadron, division, flotilla, or larger naval force afloat, and of a brigade or larger force of the naval service on shore beyond the continental limits of the United States; and

【(3) In time of war, if then so empowered by the Secretary of the Navy, by the commandant of any navy yard or naval station and by the commanding officer of a brigade or larger force of the Navy or Marine Corps, on shore not attached to a navy yard or naval station.

## 【ARTICLE 39

【A general court-martial shall consist of not more than 13 nor less than 5 commissioned officers as members; and as many officers, not exceeding 13, as can be convened without injury to the service, shall be summoned on every such court. But in no case, where it can be avoided without injury to the service, shall more than one-half, exclusive of the president, be junior to the officer to be tried. The senior officer shall always preside and the others shall take place according to their rank.

## 【ARTICLE 40

【The president of the general court-martial shall administer the following oath or affirmation to the judge advocate or person officiating as such:

【“I, A B, do swear (or affirm) that I will keep a true record of the evidence given to and the proceedings of this court; that I will not divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.”

【This oath or affirmation being duly administered, each member of the court, before proceeding to trial, shall take the following oath or affirmation, which shall be administered by the judge advocate or person officiating as such:

【“I, A B, do swear (or affirm) that I will truly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the Navy, and my own conscience; that I will not by any means divulge or disclose the sentence of the court until it shall have been approved by the proper authority; and that I will not at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law.”

## 【ARTICLE 41

【An oath or affirmation in the following form shall be administered to all witnesses before any court-martial by the president thereof:

【“You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth, and that you will state everything within your knowledge in relation to the charges. So help you God (or, ‘this you do under the pains and penalties of perjury’).”

## 【ARTICLE 42

【(a) Whenever any person refuses to give his evidence or to give it in the manner provided by these articles, or prevaricates, or behaves with contempt to the court, it shall be lawful for the court to imprison him for any time not exceeding two months: *Provided*, That the person charged shall, at his own request but not otherwise, be a competent witness before a court-martial or court of inquiry, and his failure to make such request shall not create any presumption against him.

【(b) A naval court-martial or court of inquiry shall have power to issue like process to compel witnesses to appear and testify which United States courts of criminal jurisdiction within the State, Territory, or District where such naval court shall be ordered to sit may lawfully issue.

【(c) Any person duly subpoenaed to appear as a witness before a general court-martial or court of inquiry of the Navy, who willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary

evidence, which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States and it shall be the duty of the United States district attorney, on the certification of the facts to him by such naval court to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That this shall not apply to persons residing beyond the State, Territory, or District in which such naval court is held, and that the fees of such witness and his mileage at the rates provided for witnesses in the United States district court for said State, Territory, or District shall be duly paid or tendered said witness, such amounts to be paid by the Bureau of Supplies and Accounts out of the appropriation for compensation of witnesses: *Provided further*, That no witness shall be compelled to incriminate himself or to answer any question which may tend to incriminate or degrade him.

#### 【ARTICLE 43

【The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest; and no other charges than those so furnished shall be urged against him at the trial, unless it shall appear to the court that intelligence of such other charge had not reached the officer ordering the court when the accused was put under arrest, or that some witness material to the support of such charge was at that time absent and can be produced at the trial; in which case reasonable times shall be given to the accused to make his defense against such new charge.

#### 【ARTICLE 44

【Every officer who is arrested for trial shall deliver up his sword to his commanding officer and confine himself to the limits assigned him, on pain of dismissal from the service.

#### 【ARTICLE 45

【When the proceedings of any general court-martial have commenced they shall not be suspended or delayed on account of the absence of any of the members, provided five or more are assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence is given, unless temporarily adjourned by the authority which convened it.

#### 【ARTICLE 46

【No member of a general court-martial shall, after the proceedings are begun, absent himself therefrom except in case of sickness or of an order to go on duty from a superior officer, on pain of being cashiered.

#### 【ARTICLE 47

【Whenever any member of a court-martial from any legal cause is absent from the court after the commencement of a case, all the witnesses who have been examined during his absence must, when he is ready to resume his seat, be recalled by the court and the recorded testimony of each witness so examined must be read over to him, and such witness must acknowledge the same to be correct and be subject to such further examination as the said member may require. Without a compliance with this rule, and an entry thereof upon the record, a member who shall have been absent during the examination of a witness shall not be allowed to sit again in that particular case.

#### 【ARTICLE 48

【Whenever a court-martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

#### 【ARTICLE 49

【In no case shall punishment by flogging, or by branding, marking, or tattooing on the body be adjudged by any court-martial or be inflicted upon any person in the Navy. The use of irons, single or double, is abolished, except for the purpose of safe custody or when part of a sentence imposed by a general court-martial.

## [ARTICLE 50]

[No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes.

## [ARTICLE 51]

[It shall be the duty of a court-martial, in all cases of conviction, to adjudge a punishment adequate to the nature of the offense; but the members thereof may recommend the persons convicted as deserving of clemency, and state, on the record, their reasons for so doing.

## [ARTICLE 52]

[The judgment of every court-martial shall be authenticated by the signature of the president and of every member who may be present when said judgment is pronounced, and also of the judge advocate.

## [ARTICLE 53]

[No sentence of a court-martial, extending to the loss of life or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court.

## [ARTICLE 54]

[(a) Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute, the sentence of any such court which he is authorized to approve and confirm.

[(b) The Secretary of the Navy may set aside the proceedings or remit or mitigate, in whole or in part, the sentence imposed by any naval court-martial convened by his order or by that of any officer of the Navy or Marine Corps.

## [ARTICLE 55]

[Courts of inquiry may be convened by the President, the Secretary of the Navy, the commander of a fleet or squadron, and by any officer of the naval service authorized by law to convene general courts-martial.

## [ARTICLE 56]

[A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge advocate, or person officiating as such.

## [ARTICLE 57]

[Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts in the same manner as courts-martial; but they shall only state facts, and shall not give their opinion unless expressly required so to do in the order for convening.

## [ARTICLE 58]

[The judge advocate, or person officiating as such, shall administer to the members the following oath or affirmation: "You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you without partiality." After which the president shall administer to the judge advocate, or person officiating as such, the following oath or affirmation: "You do swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing."

## [ARTICLE 59]

[The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses.

## 【ARTICLE 60

【The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge advocate, and shall, in all cases not capital nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court-martial, provided oral testimony can not be obtained.

## 【ARTICLE 61

【No person shall be tried by court-martial or otherwise punished for any offense, except as provided in the following article, which appears to have been committed more than two years before the issuing of the order for such trial or punishment, unless by reason of having absented himself or of some other manifest impediment he shall not have been amenable to justice within that period.

## 【ARTICLE 62

【No person shall be tried by court-martial or otherwise punished for desertion in time of peace, committed more than two years before the issuing of the order for such trial or punishment, unless he shall meanwhile have absented himself from the United States or by reason of some other manifest impediment shall not have been amenable to justice within that period, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was enlisted in the service.

## 【ARTICLE 63

【Whenever, by any of the Articles for the Government of the Navy of the United States, the punishment on conviction of an offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.

## 【ARTICLE 64

【(a) All officers of the Navy and Marine Corps who are authorized to order either general or summary courts-martial may order deck courts upon enlisted men under their command, for minor offenses now triable by summary court-martial.

【(b) Deck courts shall consist of one commissioned officer only, who, while serving in such capacity shall have power to administer oaths, to hear and determine cases, and to impose either a part or the whole, as may be appropriate, of any one of the punishments prescribed by article 30 of the Articles for the Government of the Navy: *Provided*, That in no case shall such courts adjudge discharge from the service or adjudge confinement or forfeiture of pay for a longer period than 20 days.

【(c) Any person in the Navy under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof.

【(d) All sentences of deck courts may be carried into effect upon approval of the convening authority or his successor in office, who shall have full power as reviewing authority to remit or mitigate, but not to commute, any such sentence and to pardon any punishment such court may adjudge; but no sentence of a deck court shall be carried into effect until it shall have been so approved or mitigated.

【(e) Deck courts shall be governed in all details of their constitution, powers, and procedure, except as herein provided, by such rules and regulations as the President may prescribe.

【(f) The records of the proceedings of deck courts shall contain such matters only as are necessary to enable the reviewing authorities to act intelligently thereon, except that if the party accused demands it within 30 days after the decision of the deck court shall become known to him, the entire record or so much as he desires shall be sent to the reviewing authority. Such records, after action thereon by the convening authority, shall be forwarded directly to, and shall be filed in, the office of the Judge Advocate General of the Navy, where they shall be reviewed, and, when necessary, submitted to the Secretary of the Navy for his action.

【(g) No person who objects thereto shall be brought to trial before a deck court. Where such objection is made by the person accused, trial shall be ordered by summary or by general court-martial, as may be appropriate.

## 【ARTICLE 65

【When actively serving under the Navy Department in time of war or during the existence of an emergency, pursuant to law, as a part of the naval forces of the United States, commissioned officers of the Naval Reserve, Marine Corps Reserve, Naval Militia, Coast Guard, Lighthouse Service, Coast and Geodetic Survey, and Public Health Service are empowered to serve on naval courts-martial and deck courts under such regulations necessary for the proper administration of justice and in the interests of the services involved, as may be prescribed by the Secretary of the Navy.

## 【ARTICLE 66

【When empowered by the Secretary of the Navy pursuant to article 26 to order summary courts-martial, the commanding officer of a naval hospital or hospital ship shall be empowered to order such courts and deck courts, and inflict the punishments which the commander of a naval vessel is authorized by law to inflict, upon all enlisted men of the naval service attached thereto, whether for duty or as patients.

## 【ARTICLE 67

【When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organization of marines shall be the same as though such organization were serving at a navy yard on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon.

## 【ARTICLE 68

【The depositions of witnesses may be taken on reasonable notice to the opposite party, and when duly authenticated, may be put in evidence before naval courts, except in capital cases and cases where the punishment may be imprisonment or confinement for more than one year as follows:

【(1) Depositions of civilian witnesses residing outside the State, Territory, or District in which a naval court is ordered to sit.

【(2) Depositions of persons in the naval or military service stationed or residing outside the State, Territory or District in which a naval court is ordered to sit, or who are under orders to go outside of such State, Territory, or District.

【(3) Where such naval court is convened on board a vessel of the United States, or at a naval station not within any State, Territory, or District of the United States, the depositions of witnesses may be taken and used as herein provided whenever such witnesses reside or are stationed at such a distance from the place where said naval court is ordered to sit, or are about to go to such a distance as, in the judgment of the convening authority, would render it impracticable to secure their personal attendance.

## 【ARTICLE 69

【Judges advocate of naval general courts-martial and courts of inquiry, and all commanders in chief of naval squadrons, commandants of navy yards and stations, officers commanding vessels of the Navy, and recruiting officers of the Navy, and the adjutant and inspector, assistants adjutant and inspector, commanding officers, recruiting officers of the Marine Corps, and such other officers of the Regular Navy and Marine Corps, of the Naval Reserve, and of the Marine Corps Reserve, as may be hereafter designated by the Secretary of the Navy, are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration.

CROSS REFERENCE TABLE

ARTICLES FOR THE GOVERNMENT OF THE NAVY TO RELATED ARTICLES IN THE UNIFORM CODE OF MILITARY JUSTICE

AGN	UCMJ	AGN	UCMJ
Art. 1.....	(1).	Art. 15.....	Repealed by act of Mar. 3, 1899.
2.....	(1).	16.....	103.
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4 (1st).....	94.	18.....	Deleted.
4 (2nd).....	90, 91, 92.	19.....	84.
4 (3rd).....	90, 91.	20.....	To be covered by regulations.
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8 (10th).....	108 (3).	52.....	54.
8 (11th).....	110 (b).	53.....	71.
8 (12th).....	92 (3), 93, 127.	54 (a).....	64, 66, 71, 74.
8 (13th).....	Deleted.	54 (b).....	74.
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8 (15th).....	108.	61-62.....	43.
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8 (18th).....	11, 98 (2).	64 (b).....	10, 20.
8 (19th).....	86, 87.	64 (c).....	28.
8 (20th).....	92.	64 (d).....	64, 65.
8 (21st).....	85.	64 (e).....	36.
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9.....	71 (b).	64 (g).....	20.
10.....	85.	65.....	2, 25.
11.....	108, 121.	66.....	15, 22, 23, 24.
12.....	Deleted.	67.....	(1).
13.....	Deleted.	68.....	49.
14.....	132.	69.....	136.

<sup>1</sup> Similar provision enacted in sec. 7 of bill.

<sup>2</sup> Uniform provision for all services enacted. See sec. 10 of bill.

**Revised Statutes (see 10 U. S. C. A. 579, 572, 575, 573; 34 U. S. C. A. 227, 389, 715):**

**[SEC. 1228. No officer of the Army who has been or may be dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a re-appointment confirmed by the Senate.]**

**[SEC. 1229. The President is authorized to drop from the rolls of the Army for desertion any officer who is absent from duty three months without leave; and no officer so dropped shall be eligible for re-appointment. And no officer in the military, or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.]**

【SEC. 1230. When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.】

【SEC. 1441. No officer of the Navy who has been dismissed by the sentence of a court-martial, or suffered to resign in order to escape such dismissal, shall ever again become an officer of the Navy.】

SEC. 1457. Officers retired from active service shall be placed on the retired list of officers of the grades to which they belonged respectively at the time of their retirement, and continue to be borne on the Navy Register. They shall be entitled to wear the uniform of their respective grades [ , and shall be subject to the rules and articles for the government of the Navy and to trial by general court-martial]. The names of officers wholly retired from the service shall be omitted from the Navy register.

【SEC. 1621. The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army.】

**Act of March 2, 1895 (28 Stat. 838), as amended (see 34 U. S. C. A. 1061):**

NAVAL ACADEMY

【That the Secretary of the Navy shall have power to convene general courts-martial for the trial of midshipmen, subject to the same limitations and conditions now existing as to other general courts-martial, and to approve the proceedings and execute the sentences of such courts, except the sentences of suspension and dismissal, which, after having been approved by the Superintendent, shall not be carried into effect until confirmed by the President.】

**Act of April 9, 1906 (34 Stat. 104) (see 34 U. S. C. A. 1066):**

SEC. 3. That the Superintendent of the United States Naval Academy may, in his discretion and with the approval of the Secretary of the Navy, cause any midshipman in the said academy to be tried by court-martial for the offense of hazing, as provided by the Act approved June twenty-third, eighteen hundred and seventy-four, and such court-martial, upon conviction, may sentence such midshipman to any punishment authorized by the said Act or by the Act approved March third, nineteen hundred and three, or authorized for any violation or breach of the rules of the said academy by the said rules, or, in cases of brutal or cruel hazing may, in addition to dismissal, sentence such midshipman to imprisonment for a period not exceeding one year: *Provided*, That such midshipman shall not be confined in a military or naval prison or elsewhere with men who have been convicted of crimes or misdemeanors; and such finding and sentence shall be subject to review [by the convening authority and by the Secretary of the Navy, as in the cases of other courts-martial.】 *In the manner prescribed for general court-martial cases.*

**Act of May 26, 1906 (34 Stat. 200) as amended (see 14 U. S. C. A. 142-147):**

【SEC. 2. That no commander of a vessel of the Coast Guard shall inflict upon any commissioned or warrant officer under his command any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days, unless a further period be necessary to bring the offender to trial; nor shall he inflict or cause to be inflicted upon any other person under his command for a single offense, or at any one time, any other punishment than confinement, with or without single irons, on board ship; confinement, on bread and water, with or without single irons, on board ship; deprivation of liberty on shore for a period not exceeding three months; extra duties, and, in case of absence without leave falling short of desertion, forfeiture of two days' pay for each day of unauthorized absence: *Provided*, That such confinement shall not continue longer than ten days unless further confinement be necessary to bring the offender to trial, and, when on bread

and water, a full ration shall be served every third day: *Provided*, That all punishment inflicted by the commander or by his order, except reprimand, shall be fully entered upon the ship's log.

【SEC. 3. That offenses against the discipline of the Coast Guard too grave in character to be adequately dealt with directly by the commanding officer, as hereinbefore provided, may be punished by Coast Guard courts, to be convened by or under the direction of the Secretary of the Treasury. Such courts shall consist of not less than three commissioned officers of the Coast Guard, and shall, under rules approved by the Secretary of the Treasury, be governed in their organization and procedure substantially in accordance with naval courts, but the jurisdiction of Coast Guard courts shall be limited to the following offenses, namely: Disobeying lawful order of superior officer, refusing to obey lawful order of superior officer; striking, assaulting, or attempting or threatening to strike or assault a superior officer while in the execution of the duties of his office; drunkenness on duty; drunkenness; gambling; misappropriation of mess funds; misuse of Government property or supplies; fraudulently signing vouchers; theft in an amount under one hundred dollars; scandalous conduct tending to the destruction of good morals; desertion; absence from duty without leave or after leave has expired; neglect of duty; conduct unbecoming an officer and a gentleman; malicious or willful destruction of public property; aiding or enticing others to desert; smuggling liquor on board a vessel of the Coast Guard; cruelty toward or oppression or maltreatment of any subordinate person in the service; using obscene or abusive language; violating or refusing obedience to any lawful order or regulation issued by the Secretary of the Treasury or the President. Such courts shall have power to impose upon a commissioned officer none other than the following punishments, namely: Summary dismissal from the service; suspension from duty for a period of two years or any part thereof upon reduced pay, which shall in no case be less than one-half nor more than three-fourths of the duty pay of such officer; reduction of rank in his own grade; retention of his present number on the official register for a specified time; imprisonment for a period not to exceed two years; official reprimand. The only punishments that may be imposed by such courts upon any person in the Coast Guard other than a commissioned officer shall be the following, namely: Dishonorable discharge; forfeiture of not to exceed two months' pay; imprisonment on land for a period not to exceed one year; confinement aboard ship not to exceed one month; confinement in single irons, on bread and water, or on diminished rations, not exceeding thirty days, but a full ration shall in all cases be given at least every third day; confinement in single irons, reduction to next inferior rating; deprivation of liberty for a period not to exceed three months; extra duties, and the imposing of these punishments will be regulated in accordance with rules prescribed by the Secretary of the Treasury. A commissioned officer of the said service may be designated by the convening authority as official prosecutor to prosecute the case in the interest of the Government, and whose general powers and duties will be prescribed by the Secretary of the Treasury. The proceedings, findings, and sentences of Coast Guard courts shall be subject to review by the Secretary of the Treasury, as the convening authority, and the records of such courts shall be filed in the division of Coast Guard, Treasury Department, and no sentence of such court shall be carried into effect until approved by the said Secretary: *Provided*, That in the case of a commissioned officer a sentence of dismissal shall not be carried into effect until approved by the President of the United States.

【SEC. 4. That the Secretary of the Treasury may designate, as the place of execution of the sentence of a Coast Guard court involving imprisonment, any prison or penitentiary that receives Federal prisoners.

【SEC. 6. That the jurisdiction conferred by this Act for the punishment of offenses against the discipline of the Coast Guard shall not be regarded as exclusive, but offenders may, in the discretion of the Secretary of the Treasury, be turned over to the civil authorities for trial by any court having jurisdiction of the offense.

【SEC. 7. That for offenses against the laws of the United States other than those specified in this Act, offenders shall be turned over to the civil authorities for trial.】

**Act of February 16, 1909 (35 Stat. 622). (See 34 U. S. C. A. 1011):**

【SEC. 15. That it shall be lawful for any civil officer having authority under the laws of the United States or of any State, Territory, or District to arrest offenders, to summarily arrest a deserter from the Navy or Marine Corps of the United States and deliver him into the custody of the naval authorities.】

**Act of January 19, 1911 (36 Stat. 894). (See 10 U. S. C. A. 574):**

【Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to drop from the rolls of the Army any officer who is absent from duty three months without leave, or who has been absent in confinement in a prison or penitentiary for more than three months after final conviction by a civil court of competent jurisdiction; and no officer so dropped shall be eligible for re-appointment.】

**Section 2, Act of March 4, 1915 (38 Stat. 1084) (see 10 U. S. C. A. 1452):**

【2. Persons sentenced to confinement upon conviction by courts-martial or other military tribunals of crimes or offenses which, under some statute of the United States or under some law of the State, Territory, District, or other jurisdiction in which the crime or offense may be committed, are punishable by confinement in a penitentiary, including persons sentenced to confinement upon conviction by courts-martial or other military tribunals of two or more acts or omissions, any one of which, under the statute or other law hereinbefore mentioned, constitutes or includes a crime or offense punishable by confinement in a penitentiary, may be confined at hard labor, during the entire period of confinement so adjudged, in any United States, State, Territorial, or District penitentiary, or in any other penitentiary directly or indirectly under the jurisdiction of the United States; and all persons sentenced to confinement upon conviction by courts-martial or other military tribunals who are not confined in a penitentiary may be confined and detained in the United States Disciplinary Barracks.】

**Act of August 29, 1916 (39 Stat. 573) (see 34 U. S. C. A. 716):**

## HOSPITAL CORPS

【Officers and enlisted men of the Medical Department of the Navy, serving with a body of marines detached for service with the Army in accordance with the provisions of section sixteen hundred and twenty-one of the Revised Statutes, shall, while so serving, be subject to the rules and articles of war prescribed for the government of the Army in the same manner as the officers and men of the Marine Corps while so serving.】

**Act of June 5, 1920 (41 Stat. 880) (see 14 U. S. C. A. 141):**

## COAST GUARD

【“Deck courts,” to consist of one commissioned officer only, may be ordered by or under the direction of the Secretary of the Treasury for the trial of enlisted men in the Coast Guard for minor offenses now triable by Coast Guard courts; and said courts shall be governed in their organization and procedure substantially in accordance with naval “deck courts,” and shall have the same power to impose punishment.】

**Act of April 25, 1935 (49 Stat. 161) (see 34 U. S. C. A. 217a):**

【Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in places beyond the continental limits of the United States where the Navy or Marine Corps is serving, such officers of the Navy or Marine Corps as are authorized to administer oaths for the purposes of the administration of naval justice and for other purposes of naval administration shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and the performance of all other notarial acts.】

**Title I, Naval Reserve Act of 1938 (52 Stat. 1176) (see 34 U. S. C. A. 853d):**

SEC. 6. In time of peace no officer or man of the Naval Reserve shall be discharged except upon expiration of his term of service or upon his own request or for full and sufficient cause, in the discretion of such administrative authority as the Secretary of the Navy may designate: *Provided*, That within a reasonable time prior to discharge for cause, officers shall be given an opportunity to be

heard by the Secretary of the Navy, or such administrative authority or other agency as he may designate, which opportunity will be considered as having been given through the mailing of notice to their address on file in the Navy Department: *Provided further*, That officers and enlisted men of the Naval Reserve on active duty shall be subject to separation therefrom in the same manner as may be provided by or in pursuance of law for the separation of officers and enlisted men of the Regular Navy: *And provided further*, That members of the Fleet Reserve and officers and enlisted men who may have heretofore been transferred to the retired list of the Naval Reserve Force or the Naval Reserve or the honorary retired list with pay or may hereafter be so transferred [ , shall at all times be subject to the laws, regulations, and orders for the government of the Navy, and ] shall not be discharged therefrom prior to the expiration of their term of service, without their consent, except by sentence of a court martial, or, in the discretion of the Secretary of the Navy, when sentenced by civil authorities to confinement in a State or Federal penitentiary as a result of a conviction for a felony.

**Title III, Naval Reserve Act of 1938 (52 Stat. 1180) (see 34 U. S. C. A. 855):**

**[SEC. 301.** All members of the Naval Reserve, when employed on active duty, authorized training duty, with or without pay, drill, or other equivalent instruction or duty, or when employed in authorized travel to or from such duty, or appropriate duty, drill, or instruction, or during such time as they may by law be required to perform active duty, or while wearing a uniform prescribed for the Naval Reserve, shall be subject to the laws, regulations, and orders for the government of the Navy: *Provided*, That disciplinary action for an offense committed while subject to the laws, regulations, and orders for the government of the Navy shall not be barred by reason of release from duty status of any person charged with the commission thereof: *Provided further*, That for the purpose of carrying the provisions of this section into effect, members of the Naval Reserve may be retained on or returned to a duty status without their consent, but not for a longer period of time than may be required for disciplinary action.]

**Act of March 22, 1943 (57 Stat. 41) (see 34 U. S. C. A. 1201):**

**[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That in addition to the persons now subject to the Articles for the Government of the Navy, all persons, other than persons in the military service of the United States, outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including but not limited to persons employed by the Government directly, or by contractors or subcontractors engaged in naval projects, and all persons, other than persons in the military service of the United States, within an area leased by the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy, shall, in time of war or national emergency, be subject to the Articles for the Government of the Navy except insofar as these articles define offenses of such a nature that they can be committed only by naval personnel: *Provided*, That the jurisdiction herein conferred shall not extend to Alaska, the Canal Zone, the Hawaiian Islands, Puerto Rico, or the Virgin Islands, except the islands of Palmyra, Midway, Johnston, and that part of the Aleutian Islands west of longitude one hundred and seventy two degrees west.]

**Act of April 9, 1943 (57 Stat. 58) (see 34 U. S. C. A. 217a-1):**

**[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That during the existence of a war in which the United States is engaged or of a national emergency declared by the President, and for six months after the termination of such war or national emergency, such officers of the Navy, Marine Corps, and Coast Guard, as the Secretary of the Navy may designate, shall have the general powers of a notary public in the administration of oaths; the execution, acknowledgment, and attestation of instruments and papers; and the performance of all other notarial acts: *Provided*, That no fee of any character shall be paid to any officer for the performance of any notarial act herein authorized: *Provided further*, That whenever the Coast Guard shall be under the jurisdiction of the Secretary of the Treasury during a national emergency, the Secretary of the Treasury shall have and may exercise as to the Coast Guard the authority of the Secretary of the Navy under this Act: *And pro-*

vided further, That the signature without seal of any officer of the Navy, Marine Corps, or Coast Guard acting as such notary public shall be prima facie evidence of his authority.]

## Uniform Code of Military Justice:

### PART I—GENERAL PROVISIONS

#### ARTICLE 1. Definitions.

The following terms when used in this code shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

- (1) "Department" shall be construed to refer, severally, to the Department of the Army, the Department of the Navy, the Department of the Air Force, and, except when the Coast Guard is operating as a part of the Navy, the Treasury Department;
- (2) "Armed force" shall be construed to refer, severally, to the Army, the Navy, the Air Force, and, except when operating as a part of the Navy, the Coast Guard;
- (3) "Navy" shall be construed to include the Marine Corps and, when operating as a part of the Navy, the Coast Guard;
- (4) "The Judge Advocate General" shall be construed to refer, severally, to The Judge Advocates General of the Army, Navy, and Air Force, and, except when the Coast Guard is operating as a part of the Navy, the General Counsel of the Treasury Department;
- (5) "Officer" shall be construed to refer to a commissioned officer including a commissioned warrant officer;
- (6) "Superior officer" shall be construed to refer to an officer superior in rank or command;
- (7) "Cadet" shall be construed to refer to a cadet of the United States Military Academy or of the United States Coast Guard Academy;
- (8) "Midshipman" shall be construed to refer to a midshipman at the United States Naval Academy and any other midshipman on active duty in the naval service;
- (9) "Enlisted person" shall be construed to refer to any person who is serving in an enlisted grade in any armed force;
- (10) "Military" shall be construed to refer to any or all of the armed forces;
- (11) "Accuser" shall be construed to refer to a person who signs and swears to the charges and to any other person who has an interest other than an official interest in the prosecution of the accused;
- (12) "Law officer" shall be construed to refer to an official of a general court-martial detailed in accordance with article 26;
- (13) "Law specialist" shall be construed to refer to an officer of the Navy or Coast Guard designated for special duty (law);
- (14) "Legal officer" shall be construed to refer to any officer in the Navy or Coast Guard designated to perform legal duties for a command.

#### ART. 2. Persons subject to the code.

The following persons are subject to this code:

- (1) All persons belonging to a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; all volunteers and inductees, from the dates of their muster or acceptance into the armed forces of the United States; and all other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates they are required by the terms of the call or order to obey the same;
- (2) Cadets, aviation cadets, and midshipmen;
- (3) Reserve personnel while they are on inactive duty training authorized by written orders which are voluntarily accepted by them, which orders specify that they are subject to this code;
- (4) Retired personnel of a regular component of the armed forces who are entitled to receive pay;
- (5) Retired personnel of a reserve component who are receiving hospitalization from an armed force;
- (6) Members of the Fleet Reserve and Fleet Marine Corps Reserve;
- (7) All persons in custody of the armed forces serving a sentence imposed by a court-martial;
- (8) Personnel of the Coast and Geodetic Survey, Public Health Service, and other organizations, when assigned to and serving with the armed forces of the United States;
- (9) Prisoners of war in custody of the armed forces;
- (10) In time of war, all persons serving with or accompanying an armed force in the field;

(11) *All persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States and the following Territories: That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands;*

(12) *All persons within an area leased by the United States which is under the control of the Secretary of a Department and which is without the continental limits of the United States and the following territories: That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.*

**ART. 3. Jurisdiction to try certain personnel.**

(a) *Subject to the provisions of article 43, any person charged with having committed an offense against this code, punishable by confinement of five years or more and for which the person cannot be tried in the courts of the United States or any State or Territory thereof or of the District of Columbia, while in a status in which he was subject to this code, shall not be relieved from amenability to trial by court-martial by reason of the termination of said status.*

(b) *All persons discharged from the armed forces subsequently charged with having fraudulently obtained said discharge shall after apprehension be subject to trial by court-martial on said charge and shall be subject to this code while in the custody of the armed forces for such trial. Upon conviction of said charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.*

(c) *Any person who has deserted from the armed forces shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.*

**ART. 4. Dismissed officer's right to trial by court-martial.**

(a) *When any officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try such officer on the charges on which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmation of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary of the Department shall substitute for the dismissal order by the President a form of discharge authorized for administrative issuance.*

(b) *If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issuance.*

(c) *Where a discharge is substituted for a dismissal under the authority of this article, the President alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.*

(d) *When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, there shall not be a right to trial under this article.*

**ART. 5. Territorial applicability of the code.**

*This code shall be applicable in all places.*

**ART. 6. Judge advocates and legal officers.**

(a) *The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be made upon the recommendation of The Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.*

(b) *Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is authorized to*

communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with The Judge Advocate General.

(c) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

## PART II—APPREHENSION AND RESTRAINT

### ART. 7. Apprehension.

(a) Apprehension is the taking into custody of a person.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this code may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

### ART. 8. Apprehension of deserters.

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the United States or of any State, District, Territory, or possession of the United States summarily to apprehend a deserter from the armed forces of the United States and deliver him into the custody of the armed forces of the United States.

### ART. 9. Imposition of restraint.

(a) Arrest is the restraint of a person by an order directing him to remain within certain specified limits not imposed as a punishment for an offense. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer, a warrant officer, or a civilian subject to this code may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

### ART. 10. Restraint of persons charged with offenses.

Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

### ART. 11. Reports and receiving of prisoners.

(a) No provost marshal, commander of a guard, or master at arms shall refuse to receive or keep any prisoner committed to his charge by an officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every command of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

### ART. 12. Confinement with enemy prisoners prohibited.

No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States.

### ART. 13. Punishment prohibited before trial.

Subject to the provisions of article 57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or con-

finement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to punishment during such period for minor infractions of discipline.

ART. 14. *Delivery of offenders to civil authorities.*

(a) Under such regulations as the Secretary of the Department may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of the said court-martial sentence.

### PART III—NON-JUDICIAL PUNISHMENT

ART. 15. *Commanding officer's non-judicial punishment.*

(a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers and warrant officers of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not to exceed one-half of his pay per month for a period not exceeding one month;

(2) upon other military personnel of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) extra duties for a period not to exceed two consecutive weeks, and not to exceed two hours per day, holidays included; or

(D) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(E) if imposed upon a person attached to or embarked in a vessel, confinement for a period not to exceed seven consecutive days; or

(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for a period not to exceed five consecutive days.

(b) The Secretary of a Department may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this article to an accused who demands trial by court-martial.

(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe, as provided in subdivision (a) and (b).

(d) A person punished under authority of this article who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

## PART IV—COURTS-MARTIAL JURISDICTION

## ART. 16. Courts-martial classified.

There shall be three kinds of courts-martial in each of the armed forces, namely:

- (1) General courts-martial, which shall consist of a law officer and any number of members not less than five;
- (2) Special courts-martial, which shall consist of any number of members not less than three; and
- (3) Summary courts-martial, which shall consist of one officer.

## ART. 17. Jurisdiction of courts-martial in general.

(a) Each armed force shall have court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review subsequent to that by the officer with authority to convene a general court-martial for the command which held the trial, where such review is required under the provisions of this code, shall be carried out by the armed force of which the accused is a member.

## ART. 18. Jurisdiction of general courts-martial.

Subject to article 17, general courts-martial shall have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code, including the penalty of death when specifically authorized by this code. General courts-martial shall also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

## ART. 19. Jurisdiction of special courts-martial.

Subject to article 17, special courts-martial shall have jurisdiction to try persons subject to this code for any noncapital offense made punishable by this code and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dishonorable discharge, dismissal, confinement in excess of six months, hard labor without confinement in excess of three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for a period exceeding six months. A bad-conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

## ART. 20. Jurisdiction of summary courts-martial.

Subject to article 17, summary courts-martial shall have jurisdiction to try persons subject to this code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any noncapital offense made punishable by this code, but no person who objects thereto shall be brought to trial before a summary court-martial unless he has been permitted to refuse punishment under article 15. Where such objection is made by the accused, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dismissal, dishonorable or bad-conduct discharge, confinement in excess of one month, hard labor without confinement in excess of forty-five days, restriction to certain specified limits in excess of two months, or forfeiture of pay in excess of two-thirds of one month's pay.

## ART. 21. Jurisdiction of courts-martial not exclusive.

The provisions of this code conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be tried by such military commissions, provost courts, or other military tribunals.

## PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

## ART. 22. Who may convene general courts-martial.

(a) General courts-martial may be convened by—

- (1) the President of the United States;
- (2) the Secretary of a Department;
- (3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army;

(4) the Commander in Chief of a Fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States;

(5) the commanding officer of an Air Command, an Air Force, an air division, or a separate wing of the Air Force;

(6) such other commanding officers as may be designated by the Secretary of a Department; or

(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by him.

**ART. 23. Who may convene special courts-martial.**

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; or of any marine brigade, regiment or barracks;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed advisable by him.

**ART. 24. Who may convene summary courts-martial.**

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When but one officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

**ART. 25. Who may serve on courts-martial.**

(a) Any officer on active duty with the armed forces shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty with the armed forces shall be eligible to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted person on active duty with the armed forces who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, prior to the convening of such court, the accused personally has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless eligible enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) For the purposes of this article, the word "unit" shall mean any regularly organized body as defined by the Secretary of the Department, but in no case shall it be a body larger than a company, a squadron, or a ship's crew, or than a body corresponding to one of them.

(d) (1) When it can be avoided, no person in the armed forces shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

**ART. 26. Law officer of a general court-martial.**

(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and who is certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member. No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer shall not consult with the members of the court, other than on the form of the findings as provided in article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court.

**ART. 27. Appointment of trial counsel and defense counsel.**

(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court-martial—

(1) shall be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or shall be a person who is a member of the bar of a Federal court or of the highest court of a State; and

(2) shall be certified as competent to perform such duties by The Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) if the trial counsel is certified as competent to act as counsel before a general court-martial by The Judge Advocate General of the armed force of which he is a member, the defense counsel appointed by the convening authority shall be a person similarly certified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel appointed by the convening authority shall be one of the foregoing.

**ART. 28. Appointment of reporters and interpreters.**

Under such regulations as the Secretary of the Department may prescribe, the convening authority of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may appoint an interpreter who shall interpret for the court or commission.

**ART. 29. Absent and additional members.**

(a) No member of a general or special court-martial shall be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

#### PART VI—PRETRIAL PROCEDURE

##### ART. 30. Charges and specifications.

(a) Charges and specifications shall be signed by a person subject to this code under oath before an officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

##### ART. 31. Compulsory self-incrimination prohibited.

(a) No person subject to this code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this code shall interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this code shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article or by any unlawful inducement shall be received in evidence against him in a trial by court-martial.

##### ART. 32. Investigation.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at such investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense, and if the accused was present at such investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subdivision (b) of this article, no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this article shall be binding on all persons administering this code, but failure to follow them in any case shall not constitute jurisdictional error.

##### ART. 33. Forwarding of charges.

When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the

officer exercising general court-martial jurisdiction. If the same is not practicable, he shall report to such officer the reasons for delay.

**ART. 34.** *Advice of staff judge advocate and reference for trial.*

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority shall not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

**ART. 35.** *Service of charges.*

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of the charges upon him, or before a special court-martial within a period of three days subsequent to the service of the charges upon him.

#### PART VII—TRIAL PROCEDURE

**ART. 36.** *President may prescribe rules.*

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which shall not be contrary to or inconsistent with this code.

(b) All rules and regulations made in pursuance of this article shall be uniform insofar as practicable and shall be reported to the Congress.

**ART. 37.** *Unlawfully influencing action of court.*

No authority convening a general, special, or summary court-martial, nor any other commanding officer, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this code shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

**ART. 38.** *Duties of trial counsel and defense counsel.*

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused shall have the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to article 27. Should the accused have counsel of his own selection, the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by article 27, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

**ART. 39. Sessions.**

Whenever a general or special court-martial is to deliberate or vote, only the members of the court shall be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and such proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer shall be made a part of the record and be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

**ART. 40. Continuances.**

A court-martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

**ART. 41. Challenges.**

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and trial counsel shall be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

**ART. 42. Oaths.**

(a) The law officer, all interpreters, and, in general and special courts-martial, the members, the trial counsel, assistant trial counsel, the defense counsel, assistant defense counsel, and the reporter shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) All witnesses before courts-martial shall be examined on oath or affirmation.

**ART. 43. Statute of limitations.**

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under articles 119 through 132 inclusive shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this article, a person charged with any offense shall not be liable to be tried by court-martial or punished under article 15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under article 15.

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) In the case of any offense the trial of which in time of war is certified to the President by the Secretary of the Department to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this article shall be extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not; or

(2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancellation, or other termination or settlement, of any contract, subcontract or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

*ART. 44. Former jeopardy.*

No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

*ART. 45. Pleas of the accused.*

(a) If an accused arraigned before a court-martial makes any irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused shall not be received to an offense for which the death penalty may be adjudged.

*ART. 46. Opportunity to obtain witnesses and other evidence.*

The trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, its Territories, and possessions.

*ART. 47. Refusal to appear or testify.*

(a) Every person not subject to this code who—

(1) has been duly subpoenaed to appear as a witness before any court martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such court, commission or board; and

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may have been legally subpoenaed to produce;

shall be deemed guilty of an offense against the United States.

(b) Any person who commits an offense denounced by this article shall be tried on information in a United States district court or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, and jurisdiction is hereby conferred upon such courts for such purpose. Upon conviction, such persons shall be punished by a fine of not more than \$500, or imprisonment for a period not exceeding six months, or both.

(c) It shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

*ART. 48. Contempts.*

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confinement for thirty days or a fine of \$100, or both.

*ART. 49. Depositions.*

(a) At any time after charges have been signed as provided in article 30, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of such charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize such officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read in evidence before

any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to the requirements of subdivision (d) of this article, testimony by deposition may be adduced by the defense in capital cases.

(f) Subject to the requirements of subdivision (d) of this article, a deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the convening authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

#### ART. 50. Admissibility of records of courts of inquiry.

(a) In any case not capital and not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party and was accorded the rights of an accused when before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of an officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

#### ART. 51. Voting and rulings.

(a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law officer may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in article 52, *viva voce*, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the Government.

#### ART. 52. Number of votes required.

(a) (1) No person shall be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person shall be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) (1) No person shall be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this code made expressly punishable by death.

(2) No person shall be sentenced to life imprisonment or to confinement in excess of ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

ART. 53. Court to announce action.

Every court-martial shall announce its findings and sentence to the parties as soon as determined.

ART. 54. Record of trial.

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the law officer. In case the record cannot be authenticated by either the president or the law officer, by reason of the death, disability, or absence of such officer, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated.

#### PART VIII—SENTENCES

ART. 55. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

ART. 56. Maximum limits.

The punishment which a court-martial may direct for an offense shall not exceed such limits as the President may prescribe for that offense.

ART. 57. Effective date of sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date such sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before such date.

(b) Any period of confinement not suspended included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial.

(c) All other sentences of courts-martial shall become effective on the date ordered executed.

ART. 58. Execution of confinement.

(a) Under such instructions as the Department concerned may prescribe, any sentence of confinement adjudged by a court-martial or other military tribunal, whether or not such sentence includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use; and persons so confined in a penal or correctional institution not under the control of one of the armed forces shall be subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District, or place in which the institution is situated.

(b) The omission of the words "hard labor" in any sentence of a court-martial adjudging confinement shall not be construed as depriving the authority executing such sentence of the power to require hard labor as a part of the punishment.

## PART IX—REVIEW OF COURTS-MARTIAL

ART. 59. *Error of law; lesser included offense.*

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

ART. 60. *Initial action on the record.*

After every trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the officer who convened the court, an officer commanding for the time being, a successor in command, or by any officer exercising general court-martial jurisdiction.

ART. 61. *Same—General court-martial records.*

The convening authority shall refer the record of every general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to The Judge Advocate General of the armed force of which the accused is a member.

ART. 62. *Reconsideration and revision.*

(a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned—

(1) for reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or

(2) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

ART. 63. *Rehearings.*

(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

ART. 64. *Approval by the convening authority.*

In acting on the findings and sentence of a court-martial, the convening authority shall approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.

ART. 65. *Disposition of records after review by the convening authority.*

(a) When the convening authority has taken final action in a general court-martial case, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) Where the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial

or directly to the appropriate Judge Advocate General to be reviewed by a board of review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate Judge Advocate General to be reviewed by a board of review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department and shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.

**ART. 66. Review by the board of review.**

(a) The Judge Advocate General of each of the armed forces shall constitute in his office one or more boards of review, each composed of not less than three officers or civilians, each of whom shall be a member of the bar of a Federal court or of the highest court of a State of the United States.

(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of an officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more.

(c) In a case referred to it, the board of review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Judicial Council, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General of the armed forces shall prescribe uniform rules of procedure for proceedings in and before boards of review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by the boards of review.

**ART. 67. Review by the Court of Military Appeals.**

(a) There is hereby established in the National Military Establishment the Court of Military Appeals which shall consist of three judges who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment to the Court of Military Appeals who is not a member of the bar of a Federal court or of the highest court of a State. The three judges of the Court of Military Appeals shall hold office during good behavior and shall receive the compensation, allowances, perquisites, and retirement benefits of judges of the United States Court of Appeals.

(b) Under rules of procedure which it shall prescribe, the Court of Military Appeals shall review the record in the following cases:

(1) All cases in which the sentence, as affirmed by a board of review, affects a general or flag officer or extends to death;

(2) All cases reviewed by a board of review which The Judge Advocate General orders forwarded to the Court of Military Appeals for review; and

(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

(c) The accused shall have thirty days from the time he is notified of the decision of a board of review to petition the Court of Military Appeals for a grant of review. The court shall act upon such a petition within thirty days of the receipt thereof.

(d) In any case reviewed by it, the Court of Military Appeals shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which The Judge Advocate General orders forwarded to the Court of Military Appeals, such action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, such action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(f) After it has acted on a case, the Court of Military Appeals may direct The Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President, or the Secretary of the Department, The Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Court of Military Appeals and The Judge Advocates General of the armed forces shall meet annually to make a comprehensive survey of the operation of this code and report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense and the Secretaries of the Departments the number and status of pending cases any recommendations relating to uniformity of sentence policies, amendments to this code, and any other matters deemed appropriate.

#### ART. 68. Branch offices.

Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office one or more boards of review. Such Assistant Judge Advocate General and any such board of review shall be empowered to perform for that command, under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and a board of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President.

#### ART. 69. Review in the office of The Judge Advocate General.

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by article 66, shall be examined in the office of The Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if The Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with article 66, but in such event there will be no further review by the Court of Military Appeals.

#### ART. 70. Appellate counsel.

(a) The Judge Advocate General shall appoint in his office one or more officers as appellate Government counsel, and one or more officers as appellate defense counsel who shall be qualified under the provisions of Article 27 (b) (1).

(b) It shall be the duty of appellate Government counsel to represent the United States before the board of review or the Court of Military Appeals when directed to do so by The Judge Advocate General.

(c) It shall be the duty of appellate defense counsel to represent the accused before the board of review or the Court of Military Appeals—

(1) when he is requested to do so by the accused; or

(2) when the United States is represented by counsel; or

(3) when The Judge Advocate General has requested the reconsideration of a case before the board of review or has transmitted a case to the Court of Military Appeals.

(d) The accused shall have the right to be represented before the Court of Military Appeals or the board of review by civilian counsel if provided by him.

(e) The appellate counsel shall also perform such other functions in connection with the review of court-martial cases as The Judge Advocate General shall direct.

#### ART. 71. Execution of sentence; suspension of sentence.

(a) No court-martial sentence extending to death or involving a general or flag officer shall be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of an officer, cadet, or midshipman shall be executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national

emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for one year or more shall be executed until affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

**ART. 72. Vacation of suspension.**

(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at such hearing by counsel if he so desires.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be forwarded for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, the vacation shall be effective, subject to applicable restrictions in article 71 (c), to execute any unexecuted portion of the sentence except a dismissal. The vacation of the suspension of a dismissal shall not be effective until approved by the Secretary of the Department.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

**ART. 73. Petition for a new trial.**

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition The Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, The Judge Advocate General shall refer the petition to the board or court, respectively, for action. Otherwise The Judge Advocate General shall act upon the petition.

**ART. 74. Remission and suspension.**

(a) The Secretary of the Department and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

(b) The Secretary of the Department may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

**ART. 75. Restoration.**

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Where a previously executed sentence of dishonorable or bad-conduct discharge is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) Where a previously executed sentence of dismissal is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance and the officer dismissed by such sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

*ART. 76. Finality of court-martial judgments.*

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution pursuant to sentences by courts-martial following approval, review, or affirmation as required by this code, shall be final and conclusive, and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in article 73 and to action by the Secretary of a Department as provided in article 74, and the authority of the President.

## PART X—PUNITIVE ARTICLES

*ART. 77. Principals.*

Any person punishable under this code who—

(1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this code;  
is a principal.

*ART. 78. Accessory after the fact.*

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

*ART. 79. Conviction of lesser included offense.*

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

*ART. 80. Attempts.*

(a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

*ART. 81. Conspiracy.*

Any person subject to this code who conspires with any other person or persons to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

*ART. 82. Solicitation.*

(a) Any person subject to this code who solicits or advises another or others to desert in violation of article 85 or mutiny in violation of article 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of article 99 or sedition in violation of article 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

*ART. 83. Fraudulent enlistment, appointment, or separation.*

Any person who—

(1) procures his own enlistment or appointment in the armed forces by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by means of knowingly false representations or deliberate concealment as to his eligibility for such separation;  
shall be punished as a court martial may direct.

**ART. 84. Unlawful enlistment, appointment, or separation.**

Any person subject to this code who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court martial may direct.

**ART. 85. Desertion.**

(a) Any member of the armed forces of the United States who—

(1) without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact he has not been so regularly separated, or enters any foreign armed service except when authorized by the United States;  
is guilty of desertion.

(b) Any officer of the armed forces who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post at proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempted desertion occurs at any other time, by such punishment, other than death, as a court-martial may direct.

**ART. 86. Absence without leave.**

Any person subject to this code who, without proper authority—

(1) fails to go to his appointed place of duty at the time prescribed; or

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed;  
shall be punished as a court-martial may direct.

**ART. 87. Missing movement.**

Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**ART. 88. Disrespect towards officials.**

Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States in which he is on duty or present shall be punished as a court-martial may direct.

**ART. 89. Disrespect towards superior officer.**

Any person subject to this code who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct.

**ART. 90. Assaulting or willfully disobeying officer.**

Any person subject to this code who—

(1) strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior officer;  
shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

**ART. 91. Insubordinate conduct towards noncommissioned officer.**

Any warrant officer or enlisted person who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his office; or

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) *treats with contempt or is disrespectful in language or deportment towards a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;*  
shall be punished as a court-martial may direct.

**ART. 92. Failure to obey order or regulation.**

*Any person subject to this code who—*

- (1) *violates or fails to obey any lawful general order or regulation; or*
- (2) *having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same; or*
- (3) *is derelict in the performance of his duties;*

shall be punished as a court-martial may direct.

**ART. 93. Cruelty and maltreatment.**

*Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.*

**ART. 94. Mutiny or sedition.**

(a) *Any person subject to this code—*

(1) *who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;*

(2) *who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty of sedition;*

(3) *who fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.*

(b) *A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.*

**ART. 95. Arrest and confinement.**

*Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.*

**ART. 96. Releasing prisoner without proper authority.**

*Any person subject to this code who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.*

**ART. 97. Unlawful detention of another.**

*Any person subject to this code who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.*

**ART. 98. Noncompliance with procedural rules.**

*Any person subject to this code who—*

(1) *is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or*

(2) *throughly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused;*  
shall be punished as a court-martial may direct.

**ART. 99. Misbehavior before the enemy.**

*Any member of the armed forces who before or in the presence of the enemy—*

(1) *runs away; or*

(2) *shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend; or*

(3) *through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property; or*

(4) *casts away his arms or ammunition; or*

(5) *is guilty of cowardly conduct; or*

(6) *quits his place of duty to plunder or pillage; or*

(7) *causes false alarms in any command, unit, or place under control of the armed forces; or*

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft or the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

**ART. 100. Subordinate compelling surrender.**

Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

**ART. 101. Improper use of countersign.**

Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

**ART. 102. Forcing a safeguard.**

Any person subject to this code who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

**ART. 103. Captured or abandoned property.**

(a) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this code who—

- (1) fails to carry out the duties prescribed in subdivision (a) of this article; or
- (2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or
- (3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

**ART. 104. Aiding the enemy.**

Any person who—

- (1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or
- (2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

**ART. 105. Misconduct as prisoner.**

Any person subject to this code who, while in the hands of the enemy in time of war—

- (1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or
- (2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

**ART. 106. Spies.**

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

**ART. 107. False official statements.**

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

**ART. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition.**

Any person subject to this code who, without proper authority—

- (1) sells or otherwise disposes of; or
- (2) willfully or through neglect damages, destroys, or loses; or
- (3) willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

**ART. 109. Property other than military property of United States—Waste, spoil, or destruction.**

Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

**ART. 110. Improper hazarding of vessel.**

(a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces, shall be punished as a court-martial may direct.

**ART. 111. Drunken or reckless driving.**

Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

**ART. 112. Drunk on duty.**

Any person subject to this code, other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

**ART. 113. Misbehavior of sentinel.**

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

**ART. 114. Dueling.**

Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

**ART. 115. Malingering.**

Any person subject to this code who for the purpose of avoiding work, duty, or service—

- (1) feigns illness, physical disablement, mental lapse or derangement; or
- (2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

**ART. 116. Riot or breach of peace.**

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**ART. 117. Provoking speeches or gestures.**

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

**ART. 118. Murder.**

Any person subject to this code who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill; or

(2) intends to kill or inflict great bodily harm; or

(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under paragraph (1) or (4) of this article, he shall suffer death or imprisonment for life as a court-martial may direct.

**ART. 119. Manslaughter.**

(a) Any person subject to this code who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this code who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those specified in paragraph (4) of article 118, directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court martial may direct

**ART. 120. Rape and Carnal Knowledge.**

(a) Any person subject to this code who commits an act of sexual intercourse with a female not his wife, by force and without her consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this code who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete these offenses.

**ART. 121. Larceny.**

Any person subject to this code who, with intent to deprive or defraud another of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, wrongfully takes, obtains, or withholds, by any means whatever, from the possession of the true owner or of any other person any money, personal property, or article of value of any kind, steals such property is guilty of larceny, and shall be punished as a court-martial may direct.

**ART. 122. Robbery.**

Any person subject to this code who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

**ART. 123. Forgery.**

Any person subject to this code who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

**ART. 124. Maiming.**

Any person subject to this code who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof; or

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

**ART. 125. Sodomy.**

(a) Any person subject to this code who engages in unnatural carnal copulation with another of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

**ART. 126. Arson.**

(a) Any person subject to this code who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this code who willfully and maliciously burns or sets fire to the property of another, except as provided in subdivision (a) of this article, is guilty of simple arson and shall be punished as a court-martial may direct.

**ART. 127. Extortion.**

Any person subject to this code who communicates threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description is guilty of extortion and shall be punished as a court-martial may direct.

**ART. 128. Assault.**

(a) Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this code who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

**ART. 129. Burglary.**

Any person subject to this code who, with intent to commit a criminal offense therein, breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

**ART. 130. Housebreaking.**

Any person subject to this code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court martial may direct.

**ART. 131. Perjury.**

Any person subject to this code who in a judicial proceeding or course of justice willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court martial may direct.

**ART. 132. Frauds against the Government.**

Any person subject to this code—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof; or

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or

(3) who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

ART. 133. *Conduct unbecoming an officer and gentleman.*

Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the armed forces.

ART. 134. *General article.*

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

#### PART XI—MISCELLANEOUS PROVISIONS

ART. 135. *Courts of inquiry.*

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary of a Department for that purpose whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed by the National Military Establishment who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record cannot be authenticated by the president it shall be signed by a member in lieu of the president and in case the record cannot be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel.

ART. 136. *Authority to administer oaths and to act as notary.*

(a) The following persons on active duty in the armed forces shall have authority to administer oaths for the purposes of military administration, including military justice, and shall have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this code outside the continental limits of the United States:

- (1) All judge advocates of the Army and Air Force;
- (2) All law specialists;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) All commanding officers of the Navy and Coast Guard;
- (6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and
- (7) All other persons designated by regulations of the armed forces or by statute.

(b) *The following persons on active duty in the armed forces shall have authority to administer oaths necessary in the performance of their duties:*

- (1) *The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;*
- (2) *The president and the counsel for the court of any court of inquiry;*
- (3) *All officers designated to take a deposition;*
- (4) *All persons detailed to conduct an investigation;*
- (5) *All recruiting officers; and*
- (6) *All other persons designated by regulations of the armed forces or by statute.*

(c) *No fee of any character shall be paid to or received by any person for the performance of any notarial act herein authorized.*

(d) *The signature without seal of any such person acting as notary, together with the title of his office, shall be prima facie evidence of his authority.*

**ART. 137.** *Articles to be explained.*

*Articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this code shall be carefully explained to every enlisted person at the time of his entrance on active duty in any of the armed forces of the United States, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time he reenlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty in the armed forces of the United States, upon his request, for his personal examination.*

**ART. 138.** *Complaints of wrongs.*

*Any member of the armed forces who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to any superior officer who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department concerned a true statement of such complaint, with the proceedings had thereon.*

**ART. 139.** *Redress of injuries to property.*

(a) *Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces he may, subject to such regulations as the Secretary of the Department may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.*

(b) *Where the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be deemed just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.*

**ART. 140.** *Delegation by the President.*

*The President is authorized to delegate any authority vested in him under this code, and to provide for the subdelegation of any such authority.*

**SEC. 2.** *If any article or part thereof, as set out in section 1 of this Act, shall be held invalid, the remainder shall not be affected thereby.*

**SEC. 3.** *No inference of a legislative construction is to be drawn by reason of the part in which any article is placed nor by reason of the catch lines of the part or the article as set out in section 1 of this Act.*

**SEC. 4.** *All offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the effective date of this Act under any law embraced in or modified, changed, or repealed by this Act may be prosecuted, punished, and enforced, and action thereon may be completed, in the same manner and with the same effect as if this Act had not been passed.*

SEC. 5. This Act shall become effective on the last day of the twelfth month after approval of this Act, or on July 1, 1950, whichever date is later: Provided, That section 12 of this Act shall become effective on the date of the approval of this Act.

SEC. 6. Articles of War 107, 108, 112, 113, 119, and 120 (41 Stat. 809, 810, 811), as amended are further amended as follows:

- (a) Delete from article 107, the words "Article 107."
- (b) Delete from article 108, the words "Article 108."
- (c) Delete from article 112, the words "Article 112."
- (d) Delete from article 113, the words "Article 113."
- (e) Delete from article 119, the words "Article 119."
- (f) Delete from article 120, the words "Article 120."

These provisions as amended herein shall be construed to have the same force, effect, and applicability as they now have, but shall not be known as "Articles of War".

SEC. 7. (a) **AUTHORITY OF NAVAL OFFICERS AFTER LOSS OF VESSEL OR AIRCRAFT.**—When the crew of any naval vessel or naval aircraft are separated from their vessel or aircraft by means of its wreck, loss, or destruction, all the command and authority given to the officer of such vessel or aircraft shall remain in full force until such crew shall be regularly discharged or reassigned by competent authority.

(b) **AUTHORITY OF OFFICERS OF SEPARATE ORGANIZATION OF MARINES.**—When a force of marines is embarked on a naval vessel or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a naval station on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any vessel over the vessel under his command and all persons embarked thereon.

(c) **COMMANDERS' DUTIES OF EXAMPLE AND CORRECTION.**—All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(d) **DIVINE SERVICE.**—The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(e) **REVERENT BEHAVIOR.**—All persons in the Navy are enjoined to behave themselves in a reverent and becoming manner during divine service.

#### OATH OF ENLISTMENT

SEC. 8. Every person who is enlisted in any armed force shall take the following oath or affirmation at the time of his enlistment: "I, -----, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice." This oath or affirmation may be taken before any officer.

#### REMOVAL OF CIVIL SUITS

SEC. 9. When any civil or criminal prosecution is commenced in any court of a State of the United States against any member of the armed forces of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the armed forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall thereupon be entered on the docket of such district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.

## DISMISSAL OF OFFICERS

SEC. 10. No officer shall be dismissed from any of the armed forces except by sentence of a general court-martial, or in commutation thereof, or, in time of war, by order of the President; but the President may at any time drop from the rolls of any armed force any officer who has been absent without authority from his place of duty for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a Federal or State penitentiary or correctional institution.

SEC. 11. The proviso of section 3 of the Act of April 9, 1906 (34 Stat. 104, ch. 1370), is amended to read as follows:

"Provided, That such midshipman shall not be confined in a military or naval prison or elsewhere with men who have been convicted of crimes or misdemeanors; and such finding and sentence shall be subject to review in the manner prescribed for general court-martial cases."

SEC. 12. Under such regulations as the President may prescribe, The Judge Advocate General of any of the armed forces is authorized upon application of an accused person, and upon good cause shown, in his discretion to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissed, dishonorable discharge, or bad conduct discharge, previously executed a form of discharge authorized for administrative issuance, in any court-martial case involving offenses committed during World War II in which application is made within one year after termination of the war, or after its final disposition upon initial appellate review whichever is the later: Provided, That only one such application for a new trial may be entertained with regard to any one case: And provided further, Within the meaning of this section and of article of war 53, World War II shall be deemed to have ended as of the effective date of this Act.

## QUALIFICATIONS OF THE JUDGE ADVOCATES GENERAL

SEC. 13. Notwithstanding any other provision of law, the Judge Advocates General, exclusive of the present incumbents, shall be members of the bar of a Federal court or of the highest court of a State shall be judge advocates or law specialists and shall have at least eight years cumulative experience in a Judge Advocate's Corps, Department or Office, the last three years of which, prior to appointment, shall be consecutive: Provided, That in time of peace the provisions of this section shall not be applicable to the Coast Guard.

SEC. 14. The following sections or parts thereof of the Revised Statutes or Statutes at Large are hereby repealed. Any rights or liabilities existing under such sections or parts thereof prior to the effective date of this Act shall not be affected by this repeal, and this Act shall not be effective to authorize trial or punishment for any offense if such trial or punishment is barred by the provisions of existing law:

(a) Chapter II of the Act of June 4, 1920 (41 Stat. 759, 787-811, ch. 227), as amended, except Articles of War 107, 108, 112, 113, 119, and 120;

(b) Revised Statutes, 1228 through 1230;

(c) Act of January 19, 1911 (36 Stat. 894, ch. 22);

(d) Paragraph 2 of section 2 of the Act of March 4, 1915 (38 Stat. 1062, 1084, ch. 143);

(e) Revised Statutes 1441, 1621, and 1624, articles 1 through 14 and 16 through 63, as amended;

(f) The provision of section 1457, Revised Statutes, which subjects officers retired from active service to the rules and articles for the government of the Navy and to trial by general court-martial;

(g) Section 2 of the Act of June 22, 1874 (18 Stat. 191, 192, ch. 392);

(h) The provision of the Act of March 3, 1893 (27 Stat. 715, 716, ch. 212), under the heading "Pay, Miscellaneous", relating to the punishment for fraudulent enlistment and receipt of any pay or allowances thereunder;

(i) Act of January 25, 1895 (28 Stat. 639, ch. 45), as amended;

(j) Provisions contained in the Act of March 2, 1895 (28 Stat. 825, 838, ch. 186), as amended, under the heading "Naval Academy", relating to the power of the Secretary of the Navy to convene general courts-martial for the trial of naval cadets (title changed to "midshipmen" by Act of July 1, 1902, 32 Stat. 662, 686, ch. 1368), his power to approve proceedings and execute sentences of such courts-martial, and the exceptional provision relating to approval, confirmation, and carrying into effect of sentences of suspension and dismissal;

(k) Sections 1 through 12 and 15 through 17 of the Act of February 16, 1909 (35 Stat. 621, 623, ch. 131);

(l) The provision of the Act of August 29, 1916 (39 Stat. 556, 573, ch. 417), under the heading "Hospital Corps", making officers and enlisted men of the Medical Department of the Navy who are serving with a body of marines detached for service with the Army subject to the rules and Articles of War while so serving;

(m) The provisions in the Act of August 29, 1916 (39 Stat. 556, 586, ch. 417), under the heading "Administration of Justice";

(n) Act of October 6, 1917 (40 Stat. 393, ch. 93);

(o) Act of April 2, 1918 (40 Stat. 501, ch. 39);

(p) Act of April 25, 1935 (49 Stat. 161, ch. 81);

(q) The provision of section 6, title I, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1176, ch. 690), making members of the Fleet Reserve and officers and enlisted men who have been or may be transferred to the retired list of the Naval Reserve Force or the Naval Reserve or the honorary retired list with pay subject to the laws, regulations, and orders for the government of the Navy;

(r) Section 301, title III, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1180, ch. 690);

(s) Act of March 22, 1943 (57 Stat. 41, ch. 18);

(t) Act of April 9, 1943 (57 Stat. 58, ch. 36);

(u) Sections 2, 3, 4, 6 and 7 of the Act of May 26, 1906 (34 Stat. 200, 201, ch. 2556);

(v) The provision of the Act of June 5, 1920 (41 Stat. 874, 880, ch. 235), under the heading "Coast Guard", authorizing the trial of enlisted men in the Coast Guard by deck courts.